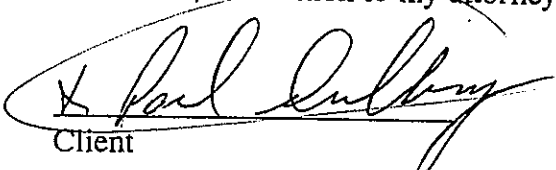


CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~33 1/3~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By:  _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

COPY
FILED
MAY 15 2012
 KATHARINE M. KEEFE
 McHENRY CTY. CLK.

STATE OF ILLINOIS)
)SS
 COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
 McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as)
 Agent of CAROLINE MCGUIRE and BILL)
 MCGUIRE, and CAROLINE MCGUIRE)
 and BILL MCGUIRE, Individually,)

Defendants.)

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
 BY LOCAL RULE 3.10
 THIS CASE IS HEREBY SET FOR SCHEDULING
 CONFERENCE IN COURTROOM 204 ON
7/18 2012, AT 9 AM PM
 FAILURE TO APPEAR MAY RESULT IN THE CASE
 BEING DISMISSED OR AN ORDER OF
 DEFAULT BEING ENTERED.

NOTICE
 BY LOCAL RULE 3.10
 THIS CASE IS HEREBY SET FOR SCHEDULING
 CONFERENCE IN COURTROOM 204 ON
7/18 2012, AT 9 AM PM
 FAILURE TO APPEAR MAY RESULT IN THE CASE
 BEING DISMISSED OR AN ORDER OF
 DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

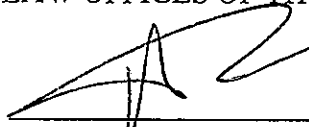
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
 Plaintiff,)
)
 vs.) No.:
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
 Defendants.)

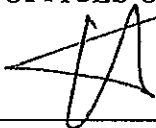
AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.
2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed \$50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie
FROM: Hans
DATE: December 5, 2011
SUBJECT: **PAUL DULBERG - NEW CLIENT**

*B/C HAM
occurred on the accident
their H.O. must pay
will cover the bills.*

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took an EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn \$12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

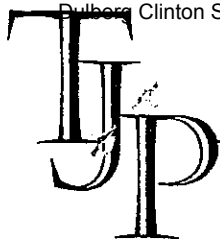
Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

FAXED

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,



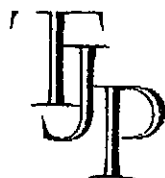
HANS A. MAST

smq

**** Transmit Conf. Report ****P.1
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Oct 22 2013 12:24pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
 McHENRY, ILLINOIS 60050
 TELEPHONE: 815.344.3797
 FACSIMILE: 815.344.5280
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THOMAS J. POPOVICH
 HANS A. MAST
 JOHN A. KORNAK

MARK J. VOGG
 JAMES P. TUTAJ
 ROBERT J. LUMBER
 THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
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RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
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Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,


 HANS A. MAST

smq

WAUKEGAN OFFICE
 210 NORTH MARTIN LUTHER
 KING JR. AVENUE
 WAUKEGAN, IL 60085

POP 000193

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts.

Both of these issues are strongly contested in your case.

As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.

As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.

Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.

Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury. Think about these issues. I will provide you Dr. Sagerman's summary soon.

Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-425QSent from my iPad

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

>

> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

>

> Sent from my iPhone

>

>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

>>

>> Only 5, That's not much at all.

>> Is this a take it or leave it or do we have any other options?

>>

>> If you want a negligence case for the homeowners ask what happened immediately after the accident.

>>

>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

>>

>> They all left me out in the yard screaming for help while they were busy making sure they were covered.

>>

>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

>>

>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

>>

>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

>>

>> I'm not happy with the offer.

>>

>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.

>>

>> Paul

>>

>> Paul Dulberg

>> 847-497-4250

>> Sent from my iPad

>>

>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

>>>

>>> Im waiting to hear from John. I tried calling him last week, but no one answered.

>>>

>>> In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

>>>

>>> Let me know what you think..

>>>

>>> Hans

>>> ----- Original Message -----

>>> From: Paul Dulberg <pdulberg@comcast.net>

>>> To: Hans Mast <hansmast@comcast.net>

>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

>>> Subject: Dave's Best and oldest friend John

>>> Hans,

>>> Just spoke with John Choyinski again about talking with you.

>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.

>>> I believe he will try and call sometime tomorrow.

>>> Paul

>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.

>>> Paul Dulberg

>>> 847-497-4250

>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.

A Professional Corporation

Attorneys at Law

6323 EAST RIVERSIDE BOULEVARD

ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700

FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of \$5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipate any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,



RONALD A. BARCH

RB:mj\37ltr.HAM

cc Tom Malatia (Claim No. 13-2779-11)

Encl.

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the depositions of the McGuire's and also wants us to order his and Dave's deposition to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's depositions. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

From: Paul Dulberg <pdulberg@comcast.net>
Subject: Fwd: Dave's Best and oldest friend John
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:

Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGulres, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the \$5,000, but if we do not, the McGulres will get out for FREE on a motion. So that's the situation.

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
Subject: Re: Dave's Best and oldest friend John

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul
Paul Dulberg
847-497-4250

Sent from my iPad

On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

Sent from my iPhone

On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

Only 5, That's not much at all.
Is this a take it or leave it or do we have any other options?

If you want a negligence case for the homeowners ask what happened immediately after the accident.

Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

Im waiting to hear from John. I tried calling him last week, but no one answered.

In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

Let me know what you think..

Hans

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>

To: Hans Mast <hansmast@comcast.net>

Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

Subject: Dave's Best and oldest friend John

Hans,

Just spoke with John Choyinski again about talking with you.

I am leaving your number with him as he has agreed to talk with you about David Gagnon.

I believe he will try and call sometime tomorrow.

Paul

Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

Sorry for the rant but Dave was a complete ass all the way and deserves this.

Paul Dulberg
847-497-4250
Sent from my iPad

MEMORANDUM

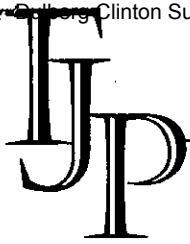
TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their \$5,000 settlement offer.



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
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TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280

www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

December 26, 2013

FAXED
12/27

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your \$5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,



HANS A. MAST

smq

power plant to recover for injuries sustained when he slipped and fell on wet concrete floor. The Circuit Court, Cook County, Dean Sodaro, J., granted summary judgment for owner, and employee appealed. The Appellate Court, Cerda, P.J., held that owner's duty to maintain safe workplace did not include mopping up water that accumulated on floor when snow and ice from pipes used in construction project melted onto floor, causing puddles of water.

Affirmed.

1. Judgment ¶185(2)

Although plaintiff does not have to try his case on defendant's motion for summary judgment, he must provide factual basis which would arguably entitle him to judgment.

2. Appeal and Error ¶949

Determination that summary judgment is appropriate will not be reversed absent abuse of trial court's discretion such that plaintiff's right to fundamental justice is violated.

3. Negligence ¶32(2.10)

Landowner owed duty to independent contractor's employee to maintain reasonably safe workplace.

4. Negligence ¶50

Landowner's duty to independent contractor's employee to maintain reasonably safe workplace did not extend to taking precautions against water tracked inside from natural accumulation outside.

5. Negligence ¶2, 10

Duty is determined by considering number of factors, including foreseeability of harm, likelihood of injury, magnitude of burden of guarding against it, consequences of placing that burden on defendant, public policy, and social considerations.

6. Negligence ¶29, 44

Landowner owes no duty where natural accumulation of snow, ice or water exists on outside or is tracked into building by pedestrian traffic.

7. Negligence ¶28

Property owner has duty and may be liable in negligence when injuries are result of unnatural or artificial accumulation of snow, ice or water, or natural condition aggravated by owner's use of area and creation of condition.

8. Negligence ¶50

Duty owed by owner of nuclear power plant to independent contractor's employee to provide reasonably safe workplace did not include duty to mop up water that accumulated on concrete floor when snow and ice from pipes being brought in from outside for use in construction project melted onto floor, causing puddles of water, where there was no evidence that owner did anything to aggravate that condition, but instead condition was continuation of natural accumulation.

Lane and Munday, Thomas J. Nathan, Chicago, for plaintiff-appellant.

Johnson, Cusack and Bell, Ltd., John W. Bell, Michael B. Gunzburg and Thomas H. Fegan, Chicago, for defendant-appellee.

Presiding Justice CERDA delivered the opinion of the court:

Plaintiff, Byong K. Choi, brought this action against defendant Commonwealth Edison Company seeking recovery for injuries sustained when plaintiff fell on a concrete floor while working at a construction site. The trial court granted defendant's motion for summary judgment. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary judgment because a genuine issue of material fact exists. In addition, he argues that the trial court erred by failing to recognize defendant's duty to provide a safe workplace for workmen engaged in construction work on its premises and by failing to extend that duty to include taking precautions against the accumulation of water inside the building.

On January 10, 1979, plaintiff Choi was employed by Universal Power Piping, Inc. (UPP) as a welder at the Dresden Nuclear Power Plant, which is owned by defendant

Commonwealth Edison Company. UPP was a subcontractor hired by Commonwealth Edison to complete installation of a decontamination flushing system in the Reactor 1 building. Plaintiff was working on the third-floor turbine deck receiving pipes brought in from the outside by UPP employees. While stored outside, the pipes became encrusted with snow and ice. Once inside, the pipes were raised from the ground floor to the third-floor turbine deck area by an overhead crane, which was operated by a Commonwealth Edison employee. Then, the pipe was taken from the crane, placed on a cart, and moved through the interlock hatch to the reactor building by UPP employees, including plaintiff. Snow and ice melted from the frozen pipes, forming puddles of water on the deck wherever the pipes were transported. Plaintiff was working in this manner all day prior to the accident.

As plaintiff and a co-worker were carrying a pipe, approximately 20 feet long and 10 inches in diameter, plaintiff slipped on water that was on the concrete floor. He fell backward, hitting his back on a pipe, and a floor spacer fell across his mid-section, causing injuries.

Previously, the appellate court upheld the trial court's summary judgment order for defendant regarding a Structural Work Act (Ill.Rev.Stat.1983, ch. 48, pars. 60 through 69). (*Choi v. Commonwealth Edison Co.* (1984), 129 Ill.App.3d 878, 85 Ill. Dec. 17, 473 N.E.2d 385.) In plaintiff's second amended complaint, he alleged that defendant was guilty of several negligent acts in its supervision of the construction work. Defendant filed a motion for summary judgment, arguing that under Illinois law, it had no duty to take precautions against natural accumulations of snow, ice or water that were tracked into a building. Defendant noted that the UPP foreman's deposition stated that he did not inform Edison of the condition because it was the duty of the contractor's own employees to clean up after themselves. Defendant pointed out that the snow came from pipes that plaintiff and his co-workers had brought in and carried to the area.

In response to defendant's motion for summary judgment, plaintiff argued that

defendant owed him a duty to maintain a reasonably safe work place because it retained control over the construction work performed by UPP employees and could stop the work in progress for safety or other reasons. Plaintiff also argued that defendant breached that duty by failing to provide a reasonably safe workplace and by failing to stop work that was being performed in an unsafe manner. In addition, plaintiff contended that the melted snow and ice that caused the unsafe condition did not accumulate naturally, was not transported into the building by pedestrian traffic, and was caused by defendant's refusal to allow the pipes to be brought into the building and cleaned off before being transported to the work area. Plaintiff notes that the deposition of Commonwealth Edison's superintendent stated that Commonwealth Edison employees had the responsibility to clean snow and ice which came into the building, had the authority to stop work being performed in an unsafe manner, and regularly inspected the area.

Concluding that the facts were essentially undisputed, the trial court ordered summary judgment for defendant. The trial court stated that there was a common law duty of an occupier of land to exercise reasonable care for the safety of people lawfully on the premises, but that duty did not extend to a building owner being required to mop up water from an accumulation of snow, ice or water brought inside a building construction site. The trial court indicated that it would be an impossible burden placed on an owner of a building construction site to require following the independent contractor's employees around, mopping up every drip of water brought in from the outside. The trial court further ruled that Commonwealth Edison did not create the dangerous condition, but merely failed to clean up a mess which is common whenever building materials from the outside of a building are moved into a building.

The trial court analogized this case to *Lohan v. Walgreens Co.* (1986), 140 Ill. App.3d 171, 173, 94 Ill.Dec. 680, 488 N.E.2d 679, which ruled that a landowner has no duty to clean up snow, ice or water that is

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tracked into a building from a natural accumulation on the outside. The trial court made no finding whether the accumulation inside the building was natural or unnatural, but did state that the water began as a natural accumulation of snow and ice on the pipes outside, and was brought into the building the same way as people tracking it on their feet. The trial court did not consider the expert's affidavit and deposition because it was not factually based. The expert did not actually examine the premises, the court noted, but merely looked at photographs.

After the trial court denied plaintiff's motion to reconsider, plaintiff appealed the summary judgment order. Plaintiff's argument emphasizes that Commonwealth Edison owed him a duty to maintain a safe workplace even though he was employed by an independent contractor hired by Commonwealth Edison. He asserts that the duty included mopping up water that accumulated on the building's floor when snow and ice from the pipes melted onto the floor, causing puddles of water. Plaintiff relies on cases holding that the landowner owes a duty to the employee of an independent contractor if the owner retains sufficient control over the contractor's work. *Claudy v. City of Sycamore* (1988), 170 Ill.App.3d 990, 120 Ill.Dec. 812, 524 N.E.2d 994; See *Haberer v. Village of Sauget* (1987), 158 Ill.App.3d 313, 110 Ill.Dec. 628, 511 N.E.2d 805; *Tsourmas v. Dineff* (1987), 161 Ill.App.3d 897, 113 Ill.Dec. 758, 515 N.E.2d 743; *Weber v. Northern Illinois Gas Co.* (1973), 10 Ill.App.3d 625, 295 N.E.2d 41; *Pasko v. Commonwealth Edison Co.* (1973), 14 Ill.App.3d 481, 302 N.E.2d 642. These cases state that the duty owed is to maintain a reasonably safe workplace.

Even if the water began as a natural accumulation on the outside, plaintiff asserts, Commonwealth Edison's intervening acts caused the water to be unnaturally accumulated on the inside of the building. In the alternative, plaintiff states, the condition was aggravated by Commonwealth Edison because it would not allow the pipes to be stored inside where the snow and ice could be safely removed after it melted. Furthermore, plaintiff argues, the pipes were brought in from the outside and load-

ed onto an overhead crane operated by a Commonwealth Edison employee. The overhead crane then took the pipes to the third floor of the building, where UPP employees transported the pipes through a tunnel into the reactor building. By the time the pipes reached the third floor, the snow and ice was melting, and water from the pipes was dripping on the floor. It is on that water that plaintiff fell and injured himself.

Defendant responds that the water was a natural accumulation tracked in from the outside by UPP employees, including plaintiff. It asserts that this situation should be treated the same as a natural accumulation tracked in from the outside by pedestrian traffic, thus creating no duty by the landowner.

Defendant relies on two types of cases: those concerning natural accumulations of snow, ice or water outdoors and those concerning snow, ice or water tracked into a building from the outside, whether tracked in by pedestrians' shoes, coats or umbrellas. In *Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679, the plaintiff slipped and fell on water that had been tracked from the outside into the common hallway of the defendants' stores. The appellate court ruled that the owners did not have a duty to continuously remove the tracks left by customers who had walked through the natural accumulations of snow or water outside, tracking them inside. Even if the owner has knowledge that the accumulation caused a dangerous condition, the court stated, there is no duty if the accumulation is natural. (*Lohan*, 140 Ill.App.3d at 173, 94 Ill.Dec. 680, 488 N.E.2d 679.) See also *Handy v. Sears, Roebuck & Co.* (1989), 182 Ill.App.3d 969, 131 Ill.Dec. 471, 538 N.E.2d 846 (summary judgment in favor of defendant store affirmed where plaintiff slipped and fell on water located within store); *Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center* (1989), 187 Ill.App.3d 1040, 135 Ill. Dec. 446, 543 N.E.2d 1014 (hospital had no duty to clean up natural accumulation of water tracked into hospital on pedestrians' coats and umbrellas); *Serritos v. Chicago Transit Authority* (1987), 153 Ill.App.3d 265, 106 Ill.Dec. 243, 505 N.E.2d 1034 (city transit authority had no duty where plain-

tiff fell on snow and slush covered steps of bus owned and operated by defendant).

[1, 2] The purpose of summary judgment is to determine whether a triable issue of fact exists. (*Haberer*, 158 Ill.App.3d at 316, 110 Ill.Dec. 628, 511 N.E.2d 805.) It may be granted if the pleadings, exhibits, affidavits, and depositions on file establish that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (Ill.Rev. Stat.1985, ch. 110, par. 2-1005(c); *Branson v. R & L Investment, Inc.* (1990), 196 Ill.App.3d 1088, 1090, 143 Ill.Dec. 689, 554 N.E.2d 624.) Although the plaintiff does not have to try his case, he must provide a factual basis which would arguably entitle him to judgment. (*Handy*, 182 Ill.App.3d at 972, 131 Ill.Dec. 471, 538 N.E.2d 846.) The determination that summary judgment is appropriate will not be reversed absent an abuse of the trial court's discretion such that the plaintiff's right to fundamental justice is violated. *Breeze v. Payne* (1989), 181 Ill.App.3d 720, 727, 130 Ill.Dec. 386, 537 N.E.2d 453.

[3-5] Commonwealth Edison owed plaintiff the duty to maintain a reasonably safe workplace, but it did not extend to taking precautions against water tracked inside from a natural accumulation outside. Duty is determined by considering a number of factors: the foreseeability of harm (*Breeze*, 181 Ill.App.3d at 727, 130 Ill.Dec. 386, 537 N.E.2d 453), the likelihood of the injury, the magnitude of the burden of guarding against it, the consequences of placing that burden on the defendant, public policy, and social considerations. *Dealers Service & Supply Co. v. St. Louis National Stock*. (1987), 155 Ill.App.3d 1075, 1080, 108 Ill.Dec. 664, 508 N.E.2d 1241.

[6, 7] In Illinois, a landowner owes no duty where a natural accumulation of snow, ice or water exists on the outside or is tracked into a building by pedestrian traffic. (*Lohan*, 140 Ill.App.3d at 172, 94 Ill.Dec. 680, 488 N.E.2d 679.) However, a property owner does have a duty and may be liable where the injuries are a result of an unnatural or artificial accumulation, or a natural condition aggravated by the owner's use of the area and creation of the condition. (*Handy v. Sears, Roebuck &*

Co. (1989), 182 Ill.App.3d 969, 971, 131 Ill.Dec. 471, 538 N.E.2d 846.) To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed. (*McCann v. Bethesda Hospital* (1979), 80 Ill.App.3d 544, 549, 35 Ill.Dec. 879, 400 N.E.2d 16.) Plaintiff made no such showing in this case.

[8] Therefore, summary judgment for defendant was proper. The water in the nuclear power plant was a continuation of a natural accumulation. There was no evidence presented that Commonwealth Edison did anything to aggravate the condition. To require an owner of a construction site to follow workmen around and immediately clean up any melting snow, ice or water that had been brought in from the outside would be too high a burden.

Affirmed.

WHITE and GREIMAN, JJ., concur.



217 Ill.App.3d 958

578 N.E.2d 37

FISTER/WARREN, successor in interest to Charles L. Fister and Associates, Inc., a corporation; Charles L. Fister and Robert J. Warren, Plaintiffs-Appellants/Counter-Defendants-Appellees,

v.

BASINS, INC., a Wyoming corporation, and Georgia Marble Company, a Georgia corporation, Defendants-Appellees/Counter-Plaintiffs-Appellants.

Nos. 1-90-2260, 1-90-2882.

Appellate Court of Illinois,
First District, Sixth Division.

July 12, 1991.

Rehearing Denied Aug. 30, 1991.

Stock sellers brought action against buyer of corporation and corporation, seek-

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,)
)
Plaintiff,) Case No. 12 LA 178
)
vs.)
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
Defendants.)

**ANSWER TO PLAINTIFF'S INTERROGATORIES TO
DEFENDANTS BILL MCGUIRE AND CAROLYN MCGUIRE**

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL MCGUIRE AND CAROLYN MCGUIRE (improperly named Caroline),
by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to
Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:	William "Bill" McGuire	Carolyn McGuire
	1016 W. Elder Avenue	1016 W. Elder Avenue
	McHenry, IL 60051	McHenry, IL 60051
	Married: Carolyn	Married: Bill
	DOB: July 29, 1952	November 26, 1946
	Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.	

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:
- a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;
 - b. Who owned the chain saw at the time of Plaintiff's alleged injury;
 - c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

- a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.
 - b. Bill McGuire was the owner of the chain saw on the date of the occurrence.
 - c. David Gagnon had Bill McGuire's permission to use the chain saw.
11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:
- a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;
 - b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;
 - c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

- a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not know how often he has used chain saws in the past.
- b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

- c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.
12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

- 15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.

Auto-Owners Insurance Company

Policy No. 48-010-965-01

Eff.: May 9, 2011 thru May 9, 2012

Personal Liability (Each Occurrence): \$300,000.00

Medical Payments (Each Person): \$1,000.00

16. Do you have any information:

- (a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;
- (b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

- a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
- b. See answer to Interrogatory No. 16(a).
- c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

- (a) The subject matter on which the opinion witness is expected to testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
- (c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
- (d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

- a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

- c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.
- e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.
- f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

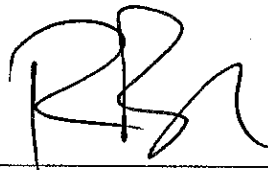
ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By



RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL MCGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire
Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

RBA
Notary Public



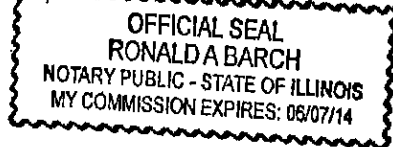
STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire
Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

[Signature]
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 2/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

CASE NO. 12LA000178

VS.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and
BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE,
Individually,

Defendant(s).

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

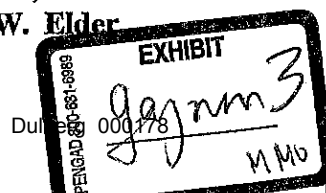
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

- (a) Witnessed or claims to have witnessed the occurrence in question.
- (b) Was present or claims to have been present at the scene immediately before said occurrence.
- (c) Was present or claims to have been present immediately after said occurrence.
- (d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred ^{BACKED} in front of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

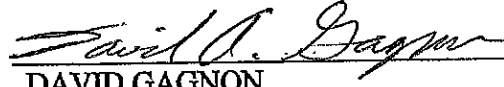
- (b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.
- (c) For each controlled expert witness, identify:
 - (i) the subject matter on which the witness will testify;
 - (ii) the conclusions and opinions of the witness and the bases therefor;
 - (iii) the qualifications of the witness; and
 - (iv) any reports prepared by the witness about the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

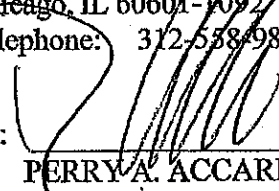
Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-538-9821

By: 

PERRY A. ACCARDO

Firm No.: 46878

E-MAIL ADDRESS:

ILLINOISLEGAL@ALLSTATE.COM

Attorney Bar No.: 6228720

Attorney for Defendant(s):

David Gagnon



Claim# 0245281968.1 - RED

To Whom It May Concern:

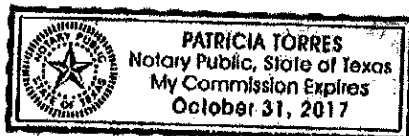
I, Olivia Leach, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 06/28/2011. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

Olivia Leach

Claim Support

State of Texas, County of Dallas

On this 15th day of February 2016, before me personally appeared Olivia Leach to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.



Patricia Torres
Notary Public

RECEIVED

FEB 16 2016

STAFF COUNSEL

Michael Koch Ins
612 S Wells, Unit F
Lake Geneva WI 53147

Your Quick Insurance Check

- ✓ Verify the information listed in the Policy Declarations.
- ✓ Please call if you have any questions.
- ✓ Now you can pay your premium before your bill is issued - visit allstate.com or call 1-800-Allstate®.



David and Pam Gagnon
39010 90th Pl
Genoa City WI 53128-2402

With this renewal, keep getting protection and rewards like never before.

Allstate® Your Choice Home Insurance—Your Renewal Offer

We're pleased to offer to renew your Allstate Property and Casualty Homeowners policy with the Your Choice Home Gold Protection package for another year.

With this package, you're saying YES to extra benefits, including:

- Being renewed regardless of the number of claims you have.
- For remaining claim-free, a credit of up to 5% to apply towards your next renewal premium.
- Extended protection in the event of a covered loss.
- Increased coverage for contents and valuables inside your home.
- Coverage for theft of jewelry, watches and furs—up to \$5000.

Be sure to check the **Your Benefits and Opportunities** page, which provides information about the Gold Protection package features, along with ways to save even more on your premium. And don't forget that we now offer new Personalized Options, which provide tailored coverages designed to meet the needs of today's homeowner—details are also highlighted on the Your Benefits and Opportunities page.

Additional Information

You'll want to review the attached Policy Declarations to make sure you're comfortable with the coverage choices you've made. Also, unless a mortgage company or lienholder pays your insurance premium for you, your bill will be sent to you separately. If you're enrolled in the Allstate Easy Pay Plan, you won't receive a bill. Instead, we'll send you a statement detailing your payment withdrawal schedule.

(over)

PROP *510004810081053004221001*

000000912697167 070 065 WI



Information as of
August 10, 2010

RP468

Have Questions? Please Contact Us

To learn more about Personalized Options, or if you have questions about your policy, please call your Allstate representative at (866) 480-8611. For online services, such as making a payment or viewing policy information, you can register at our Customer Care Center on allstate.com. And for 24-hour-a-day, 7-day-a-week service and information, just call 800-ALLSTATE® (800-558-888).

We Appreciate Your Business

Thanks again for choosing Allstate—where you get more than just great coverage and service. You get Allstate's 55 years of business experience behind you. So you're working with a team of people who know insurance and give you the freedom to manage your policy your way.



Frederick F. Cripe
President, Allstate Property and Casualty Insurance Company

More Ways To Save

There are a variety of ways to save money on your Allstate homeowners insurance. Below are just a few discounts and savings options that may be available in your area (subject to qualifications).

Home Buyer Discount

For those who have recently purchased a home that is less than 50 years old.

Claim Free Discount

For those who maintain a property policy for at least one year prior to their Allstate policy's effective date and have no claims within five years.

55 and Retired Discount

For those who are retired and over age 55.

Home and Auto Discount

For those who insure their home, condo, mobile home or apartment through Allstate, as well as their auto.

Age of Home Discount

A varying discount based on the age of home (under 50 years old)—the newer the home, the larger the discount.

Partially Renovated Home Discount

For those with certain home renovations that were completed by a licensed contractor (such as a new roof or updated electrical or plumbing systems).

To learn more about these and other discounts available in your area, contact your Allstate representative today!

IMPORTANT INFORMATION

Please read the following about the Gold Protection package features.

Guaranteed Renewal for Claims

Regardless of the number of claims you have, your policy will be renewed. But note that your policy may still be non-renewed for other reasons including type of claim and condition of property.

Claim-Free Bonus

For every designated twelve-month period that your policy is claim-free, a Claim-Free Bonus of up to 5% of your current policy's premium will be returned to you in the form of a credit that can be applied toward your next twelve-month renewal premium. If your policy does not renew, the credit amount will be applied to any outstanding premium balance, and any remainder refunded to you.

Note: this document provides general information about the features of the Gold Protection package you selected. The specific details, which govern how the features apply, are shown in Allstate's rates, rules, and/or forms currently in effect. Additionally, continuation of your policy is subject to Allstate's underwriting criteria.

X71644 -1

Allstate Property and Casualty Insurance Company

RENEWAL Homeowners Policy Declarations

Summary

NAMED INSURED(S) David and Pam Gagnon 39010 90th Place Genoa City WI 53128-2402	YOUR ALLSTATE AGENT IS: Michael Koch Ins 612 S Wells, Unit F Lake Geneva WI 53147	CONTACT YOUR AGENT AT: (262) 248-0861
POLICY NUMBER 9 12 697167 10/24	POLICY PERIOD Begins on Oct. 24, 2010 at 12:01 A.M. standard time, with no fixed date of expiration	PREMIUM PERIOD Oct. 24, 2010 to Oct. 24, 2011 at 12:01 A.M. standard time
LOCATION OF PROPERTY INSURED 39010 90th Place, Genoa City, WI 53128-2402		
MORTGAGEE • WELLS FARGO BANK NA 936 ITS SUCCESSORS &/OR ASSIGNS P O Box 100515 Florence SC 29502-0515 <i>Loan # 0254903834</i>		

Total Premium for the Premium Period *(Your bill will be mailed separately)*

Premium for Property Insured	\$565.91
Premium for Scheduled Personal Property Coverage	\$50.00
TOTAL	\$615.91

Your premium reflects the Gold Protection package.

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Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
 For Premium Period Beginning: Oct. 24, 2010

COVERAGE AND APPLICABLE DEDUCTIBLES
 (See Policy for Applicable Terms, Conditions and Exclusions)
LIMITS OF LIABILITY

Dwelling Protection - with Building Structure Reimbursement Extended Limits	\$135,174	
• \$500 All Peril Deductible Applies		
Other Structures Protection	\$60,186	
• \$500 All Peril Deductible Applies		
Personal Property Protection - Reimbursement Provision	\$101,381	
• \$500 All Peril Deductible Applies		
Additional Living Expense	Up To 12 Months	
Family Liability Protection	\$300,000	each occurrence
Guest Medical Protection	\$1,000	each person

DISCOUNTS Your premium reflects the following discounts on applicable coverage(s):

Protective Device (SPP)	5.00 %	Home and Auto	35.00 %
Protective Device	3.00 %	Claim Free	15.00 %

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family
 Your dwelling is 2 mile(s) to the fire department

Allstate Property and Casualty Insurance Company

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Scheduled Personal Property Coverage

Your policy includes Scheduled Personal Property Coverage. Please refer to the Scheduled Personal Property endorsement (form APC273) for terms, conditions and exclusions applicable to your Scheduled Personal Property Coverage.

PROPERTY CLASS(ES) AND APPLICABLE DEDUCTIBLES	TOTAL OF INDIVIDUAL ITEM LIMITS PER CLASS (See your APC273 for coverage limits applicable for each scheduled item)
Jewelry	\$5,265

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Homeowners Policy form APC268
- Extended Protection Amendatory End. form APC270
- Scheduled Personal Property End. form APC273
- Wisconsin Homeowners Amendatory End. form APC242-2
- Lender's Loss Payable Endorsement form APC275
- Guaranteed Renewal for Claims form APC308

Important Payment and Coverage Information

The Property Insurance Adjustment condition applies.

Do not pay. Mortgagee has been billed.

IN WITNESS WHEREOF, Allstate Property and Casualty Insurance Company has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of Allstate Property and Casualty Insurance Company.

Frederick F. Cripe

Frederick F. Cripe
President

Mary J. McGinn

Mary J. McGinn
Secretary

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Allstate Property and Casualty Insurance Company

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Important Notice

DWELLING PROFILE

Allstate has determined that the estimated cost to replace your home is : \$132,532

The enclosed Policy Declarations shows the limit of liability applicable to Coverage A—Dwelling Protection of your homeowners insurance policy. The estimated replacement cost of your home is the minimum amount for which we will insure your home.

The decision regarding the limit applicable to your Coverage A — Dwelling Protection is your decision to make, as long as, at a minimum, your limit equals the estimated replacement cost as determined by Allstate and does not exceed maximum coverage limitations established by Allstate.

It is important to keep in mind that your Coverage A limits reflect a replacement cost that is only an estimate based on data that was available to us when we made this estimate (this data is described further below). The actual amount it will cost to replace your home cannot be known until after a covered total loss has occurred.

How is the replacement cost estimated?

Many factors can affect the cost to replace your home, including its age, size, and type of construction. For example, the replacement cost uses construction data, such as labor and materials, that are available to us when we made this estimate. This estimate is also based on characteristics of the home, which include information that you provided to us. You might have chosen to insure your home for a higher amount than the estimated replacement cost shown above.

Note to customers renewing their policy

The estimated replacement cost for your home may have changed since the last time we communicated this information to you. This is because, at renewal, Allstate uses the home characteristics that you have provided to us to recalculate and update the estimated replacement cost. Using updated labor and material rates for your zip code, Allstate takes the home characteristics you have provided and determines the updated estimated replacement cost. The information about your home's characteristics is provided below.

If the information about your home shown below requires any change or if you have any questions or concerns about the information contained in this Important Notice, please contact your Allstate representative, or call us at 1-800-Allstate.®

DWELLING STYLE: 1.0 Story(s), 1 Family(s), Built 1958, Living Area 830 sq. ft.

FOUNDATION: 100% Slab

ADDITIONS: Detached Structures -- Detached Garage - 3 Car (1)

Detached Structures -- Shed - Large (1)

Interior -- Kitchen - Average (1)

Interior -- Full Bath - Designer (1)

DETAIL: Exterior Walls -- Aluminum Siding 100 %

Roofing -- Asphalt/Fiberglass Shingle 100 %

Interior Partitions -- Drywall 100 %

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Interior Partitions -- Less than 10 ft Wall Height 100 %

Heating & Cooling -- Heat & Central Air Cond. - Avg Cost 100 %

SPECIAL FEATURES: Exterior -- Bay Windows (1)

Decrease Language:

Additional Information about Dwelling Protection Limits

Your policy includes a feature called "Property Insurance Adjustment" (PIA). PIA reflects changes in construction costs in your area that may have occurred during the policy period. This information is useful in estimating the amount of insurance coverage needed to cover the cost of rebuilding your home in the event of a covered total loss.

We would like you to know that your policy's PIA recently indicated that certain construction costs in your market have declined. Based on this information, you may decide to lower your Dwelling Protection limits. If you choose to lower your Coverage A—Dwelling Protection limits, your premium will decrease accordingly. Please note that decreasing your Dwelling Protection limits may result in decreases in other coverages that are tied to your Coverage A limits and could lower your premium.

It is important for you to understand that PIA estimates are only estimates and lowering your Dwelling Protection limits may leave you with insufficient coverage in the event of a loss. For example, if you have done any remodeling to your home which has not been updated in our records, your home's replacement cost may be higher than our current records indicate. In that case, you may want to maintain or even increase your limits. Conversely, there is a possibility that your current limits may provide coverage in excess of the actual replacement cost of your home not only based on the PIA estimate, but on other considerations. For example, if you originally decided to insure your home at an amount that exceeded the estimated replacement cost, you may want to call your Allstate representative to discuss the current value of your home and the possibility of lowering your limits.

If you have any questions about PIA, or your policy in general, please contact your Allstate representative.

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Important Notice

Allstate's Privacy Policy

At Allstate, we value you as a customer and share your concerns about privacy. To help you understand how we treat the nonpublic personal information ("customer information") that we obtain from you or other sources in the course of providing you with products and services, this notice describes our use and protection of that information.

Whether you're doing business with us through your local agent or broker, our Customer Information Center, or allstate.com, we want you to know that Allstate respects your privacy and protects your information.

- We do not sell customer information.
- We do not share your customer information with persons, companies, or organizations outside of Allstate that would use that information to contact you about their own products and services.
- We expect persons or organizations that provide services on our behalf to keep customer information confidential and to use it only to provide the services we've asked them to perform.
- Within Allstate, we communicate to our employees regarding the need to protect customer information, and we've established physical, electronic, and procedural safeguards to protect customer information.

Below we've provided answers to questions that might be on your mind regarding privacy. You may be wondering ...

What do we do with your customer information?

Allstate does not sell your customer information, or medical information, to anyone. Nor do we share it with companies or organizations outside of Allstate that would use that information to contact you about their own products and services. If that practice were ever to change, we would, of course, offer you the ability to opt out of this type of information sharing, and we would offer you the opt-out with time for you to respond before the change in our practice took place.

Your agent or broker may use customer information to help you with your overall insurance program. We may also communicate with you about products, features, and options you have expressed an interest in or that we believe may be of interest to you. We may, without authorization but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of Allstate to fulfill a transaction you have requested, service your policy, market our products to you, investigate or handle claims, detect or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These persons or organizations may include: our affiliated companies, companies that perform marketing services on our behalf, other financial institutions with which we have a joint marketing agreement for the sale of our own products, and your agent or broker.

What kind of customer information do we have, and where did we get it?

Much of the customer information that we have about you comes directly from you. When submitting your application or request for insurance or other products and services we offer, or requesting an insurance quote, you may give us information such as your name, address, and Social Security number. We keep information about your transactions with our affiliates, others or us—for example, the types of products and services you purchase from us, premiums, account balances, and payment history.

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We also may collect information from outside sources, including consumer reporting agencies and health care providers. This information may include loss information reports, motor vehicle reports, credit reports, and medical information.

How do we protect your customer information?

When we share customer information with companies working on Allstate's behalf, we expect those companies to use that information only to provide the service we have asked them to perform. Within Allstate, customer information is available to those individuals who may need to use it to fulfill and service the needs of Allstate customers. We communicate the need to protect customer information to all employees and agents, especially those individuals who have access to it. Plus, we've established physical, electronic, and procedural safeguards to protect customer information.

Finally, should your relationship with Allstate end, your customer information will remain protected in accordance with our privacy practices as outlined in this Important Notice.

How can you find out what information we have about you?

You may request to either see, or obtain from us by mail, the customer information about you in our records. If you believe that information is incomplete or inaccurate, you may request that we make any necessary corrections, additions or deletions to the disputed customer information. To fulfill your request, we may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose customer information to you on our behalf. You may also request a more complete description of the entities to which we disclose customer information, or the circumstances that might warrant such disclosures. Please send any of the requests listed above in writing to: Allstate Insurance Company, Customer Privacy Inquiries, P.O. Box 11904, Roanoke, VA 24022.

If you are an Internet user. . .

Our website, allstate.com, provides information about Allstate, our products, and the agencies and brokers that represent us. You may also perform certain transactions on the website. When accessing allstate.com, please be sure to read the Privacy Statement that appears there.

To learn more, the allstate.com Privacy Statement provides important information relating to your use of the website, including, for example, information regarding: 1) our use of online collecting devices known as "cookies"; 2) our collection of information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site; 3) who should use our web site; 4) the security of information over the Internet and 5) links and co-branded sites.

We hope you have found this Important Notice helpful. If you have any questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-Allstate.

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This notice is being provided on behalf of the following companies:

Allstate County Mutual Insurance Company
Allstate Indemnity Company
Allstate Investment Management Company
Allstate New Jersey Insurance Company
Allstate Texas Lloyd's

Allstate Fire and Casualty Insurance Company
Allstate Insurance Company
Allstate Motor Club, Inc.
Allstate Property and Casualty Insurance Company
Allstate Texas Lloyd's, Inc.

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Forestview Mortgage Insurance Company
Roadway Protection Auto Club, Inc.

General Underwriters Agency, Inc.

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Important Notice

Identity Theft Expenses Coverage — Coverage for Identity Theft Victims

While modern technology has made our lives easier, it's also made it easier for thieves to commit what's become the fastest growing crime in America* — identity theft.

Thieves begin by gaining access to personal information such as your Social Security number, date of birth and driver's license number. They then use this information to set up fake accounts, open loans, rent housing, secure employment or even obtain medical care — all without you even knowing.

As this crime grows increasingly common, consumers need options for dealing with the costs and hassles related to identity theft—that's why we're offering Identity Theft Expenses Coverage.

For just \$ 30 per year you can get help to restore your good name.

Now Allstate has a product that can help you if your identity is stolen. You can add this optional coverage to your property policy for just a few dollars a month—a small price to pay for peace of mind. Especially when you consider that while other insurance companies typically require a deductible for similar protection, with Allstate there is no deductible.

Allstate takes identity theft expense coverage a step further.

If you purchase this coverage we'll reimburse you for covered expenses you incur to restore your identity up to a \$25,000 coverage limit. That's more than most companies offer for this type of coverage. This coverage includes reimbursement for:

- **Attorneys fees** (subject to applicable coverage limits)—in case you need to hire an attorney to defend you if lawsuits are brought against you by merchants or collection agencies, if you need help to remove criminal or civil judgements wrongly entered against you, or to challenge information contained in your credit report.
- **Lost wage recovery** (up to \$250/day with a \$5,000 cap) — this will help cover wages or salary you may lose if you need to take time off work to complete affidavits or meet with law enforcement agencies, financial institutions, credit grantors, credit reporting agencies or attorneys.
- **Loan reapplication fees** — this covers your expenses if you need to reapply for loans denied you solely because the lender received incorrect information due to identity theft.
- **Other expenses** — covers other expenses involved in restoring your identity, such as mailing costs, notary expenses and long distance phone calls.

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You can get help if you become a victim.

If you ever become a victim of identity theft, you probably won't know all that is involved in restoring your name. There are many issues you would need help with, including:

- Understanding your rights as an identity theft victim.
- Filling out paperwork, including police reports.
- Issuing a Fraud Alert to the three major credit bureaus, as well as Social Security Administration, Federal Trade Commission, and U.S. Postal Service.
- Obtaining copies of your credit bureau reports.
- Working with the three major credit bureaus to restore the accuracy of your credit history.
- Reviewing your credit history to verify if fraud includes items such as public records, (liens, judgements, bankruptcies); credit accounts; or errors with addresses/prior employment.
- Issuing a fraud alert to affected financial institutions and credit card companies.
- Tracing Social Security numbers, notifying and working with the Department of Motor Vehicles, collection agencies for creditors, and law enforcement personnel.

This may seem overwhelming, but our Identity Theft Expenses Coverage can help. With it, if you decide to hire a firm to help you address identity theft issues such as these, you will have up to \$2,000 available to pay for their services. In addition, we may refer you to a firm that specializes in addressing the effects of identity theft.** In either case, if you have this coverage you'll have peace of mind knowing you can get help to restore your identity.

Are you in Good Hands®?

With Allstate you have 75 years of business experience behind you. That means you're getting more than great products and service. You get a team of people who know insurance and give you the freedom to manage your insurance your way. To sign up for Identity Theft Expenses Coverage, or for more information, just call your Allstate representative, or log onto allstate.com.

You should never be alone. That's our stand.

**Referrals, if any, are solely at the discretion of Allstate. Identity Theft Expenses Coverage is subject to policy terms. Please read the policy endorsements carefully.

* Federal Trade Commission Identity Theft Survey Report, September 2003

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Allstate Property and Casualty Insurance Company

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For Premium Period Beginning: Oct. 24, 2010

Important Notice

Important Information About Your Allstate Policy

The enclosed Policy Declarations includes important information, such as your address, the coverages and coverage limits you've chosen, the names of insured persons — as well as other details pertinent to your policy. These details may include, for example, for motor vehicle policies, the drivers and vehicles you've insured, as well as the vehicle identification numbers (VIN) assigned to your insured vehicles; and, for property policies, the location of the insured property and mortgagee information, if applicable. Your Policy Declarations also lists any discounts or surcharges applied to your policy.

Because much of the information found on your Policy Declarations is used to help us determine your premium, please be sure to review your Policy Declarations carefully each time you receive one. You may want to add coverage, delete coverage or change your coverage limits — or you may want to change other information relating to your policy, whether it be a motor vehicle, your home or other insured property. You may also want to contact your Allstate representative for information concerning discounts that may be available for your policy.

Making changes to your policy

If you need to make a change to any of the information listed on your Policy Declarations, please notify your Allstate representative of the change as soon as possible. With a few exceptions, **any changes will be effective as of the date you notify us.**

If you have any questions about this notice, or if you need to update any of the information listed on the enclosed Policy Declarations, please contact your Allstate agent or our Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

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Allstate Property and Casualty Insurance Company

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For Premium Period Beginning: Oct. 24, 2010

Important Notice

Information about Flood Insurance

Protection against flood damage

Most homeowners, renters and commercial insurance policies do not provide coverage for damage caused by floods. In fact, protection against floods is generally available only through a separate policy.

That's why Allstate is a participant in the National Flood Insurance Program and offers standard flood insurance policies*. A flood policy can help complete the insurance protection for your property and help protect your financial well-being.

You may need it more than you think

Approximately 90% of all disasters in the U.S. are flood related. While you may think that it couldn't happen to you, over 25% of all flood losses occur in low to moderate risk areas.

And because flood damage is often accompanied by other damage, such as wind and hail (which is typically covered under a property policy), selecting Allstate gives you the convenience and peace of mind that comes with working with just one claim adjuster and one agent, instead of two or more.

It's affordable

The federal government sets the rates for flood insurance, so there's typically no difference in rates from policy to policy -- you can generally switch to a flood insurance policy administered by Allstate for the same amount of premium. If you choose Allstate, you can have the service, convenience and comfort you've come to expect from us.

For more information about flood insurance, or if you have any questions about your policy in general, please contact your Allstate representative or visit us at allstate.com.

* Allstate provides the standard flood insurance policy under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations. The standard flood insurance policy is written by Allstate for the National Flood Insurance Program which is administered by the Federal Insurance Administration, part of the Federal Emergency Management Agency.

Subject to availability and qualifications. Other terms, conditions and exclusions may apply.



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Information about Scheduled Personal Property Coverage

Protection for your valuables

Allstate offers Scheduled Personal Property (SPP) coverage to help protect your valuables.

These items can include jewelry (such as engagement and wedding rings), fine art and musical instruments. Sports equipment, such as golf clubs, can also be covered by SPP.

In addition, SPP can cover valuables stored outside of your home in a safe deposit box or bank. And if you work from home and use computer or audio-visual equipment for business purposes, SPP can cover these items as well.

Already have SPP?

Even if you currently have SPP coverage, it's a good idea to review your coverage annually. It's possible that the value of your property has changed or that you have purchased new items that have not been added to your coverage.

Affordable coverage

The cost of SPP coverage varies, but the value of your property is the best way to determine how much coverage you need —the rates are generally a small percentage of the total value of the items you're insuring. This could mean that your valuables are being protected for only a fraction of the cost.

To learn more about SPP coverage, or if you have any questions about your insurance policy in general, contact your Allstate representative, or visit us at allstate.com.

Subject to availability and qualifications. Other terms, conditions and exclusions may apply.

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Allstate Property and Casualty Insurance Company

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Important Notice

Thank you for being a customer with us. This notice is to inform you that you have the right to cancel this policy whenever you choose by simply contacting your insurance representative or calling us directly at 1-800-255-7828.

Of course, we hope that you never decide to discontinue your relationship with us. We appreciate your business, and we hope to have the opportunity to provide you with the insurance coverage you need for as long as you need it.

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Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Wisconsin Homeowners

Amendatory Endorsement – APC242-2

This endorsement amends your Homeowners Policy and is in addition to all other amendatory endorsements which apply to this policy.

I. In the General section, the following changes are made:

A. The Cancellation provision is replaced by the following:

Cancellation

Your Right to Cancel:

You may cancel this policy by returning it to us or by notifying us in writing of the future date you wish to stop coverage.

Our Right to Cancel:

Atstate may cancel this policy by mailing notice to you at the mailing address shown on the Policy Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with us, we may cancel this policy for any reason.

When this policy has been in effect for 60 days or more, or if it is a renewal with us, we may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts; or
- 3) there has been substantial change or increase in hazard in the risk we originally accepted.

If we cancel this policy, we will give you at least 10 days notice before the cancellation takes effect. Our mailing the notice of cancellation to you will be deemed to be proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. Your return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

B. Our Right Not to Renew or Continue is replaced by the following:

Our Right Not to Renew or Continue:

We have the right not to renew or continue the policy beyond the current premium period. If we do not intend to continue or renew the policy, we will mail you notice at least 60 days before the end of the premium period. Our mailing notice of non-renewal to you will be deemed proof of notice.

Any unearned premium amounts under \$2.00 will be refunded only upon **your** request.

C. Misrepresentation, Fraud or Concealment is replaced by the following:

If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any **insured person** has concealed or misrepresented any material fact or circumstance and

1. **we** rely on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty is either material or made with intent to deceive; or
2. the fact misrepresented or falsely warranted contributes to the loss.

D. Action Against Us is replaced by the following:

No one may bring an action against us unless there has been full compliance with all policy terms.

E. The following provision is added:

Conditional Reinstatement

If **we** mail a cancellation notice because **you** did not pay the required premium when due and **you** then tender payment by check, draft, or other remittance which is not honored upon presentation, **your** policy will terminate on the date and time shown on the cancellation notice and any notice **we** issue which waives the cancellation or reinstates coverage is void. This means that **We** will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

II. In Section I—Your Property, the following changes are made:

A. Under Losses We Cover Under Coverage C, Item 8 is replaced with the following:

8. Vandalism or Malicious Mischief.

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 60 days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

B. In Additional Protection —Additional Living Expense is replaced by the following:

Additional Living Expense

We will pay the reasonable and necessary increase in living expenses and the lost fair rental income for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses or **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

We will pay your lost fair rental income resulting from a covered loss under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection, less charges and expenses which do not continue, when a loss we cover under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection makes the part of the residence premises you rent to others, or hold for rental, uninhabitable. We will pay for lost fair rental income for the shortest time required to repair or replace the part rented or held for rental but not to exceed 12 months. However, payments for your lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.

- C. In Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, under Section A, Item 6, is replaced by the following:

6. Vandalism or Malicious Mischief if your dwelling is vacant or unoccupied for more than 60 consecutive days immediately prior to the vandalism or malicious mischief. A dwelling under construction is not considered vacant or unoccupied.

- D. In Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, under Section C, Item 5., the following exception is added:

This exclusion does not apply when the residence premises is partially destroyed but ordered destroyed by fire ordinance or similar law.

- E. In Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, under section C, Item 8, is replaced by the following:

8. Intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
a) may be reasonably expected to result from such acts; or
b) is the intended result of such acts.

This exclusion applies regardless of whether or not the insured person is actually charged with or convicted of a crime.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

- F. In Section I Conditions, under How We Pay For A Loss provision, the following is added:

We agree that in the event of a total loss we will pay the limit of liability shown on the Policy Declarations for Coverage A—Dwelling Protection. This limit represents the total value of the dwelling on the residence premises, including structures attached to the dwelling.

G. In **Section I Conditions**, the following changes are made:

1. The **Our Settlement of Loss** provision is replaced by the following:

Our Settlement of Loss

We will settle any covered loss with you. We will settle with you, unless another payee is named in the policy. We will settle within 30 days after the amount of loss is finally determined. This amount may be determined by an agreement among you, any other payee or entity named in the policy and us, an appraisal award or a court judgment.

2. In **Action Against Us**, paragraph b. is deleted.

III. In **Section II—Family Liability and Guest Medical Protection**, the following changes are made:

A. In **Losses We Do Not Cover Under Coverage X**, the second paragraph is amended as follows:

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, we will provide a defense with counsel of our choice, even if the allegations are groundless, false or fraudulent. We are not obligated to pay any claim or judgment after we have exhausted our limit of liability.

B. In **Losses We Do Not Cover Under Coverage X and Coverage Y**, Section C, **Losses We Do Not Cover Under Coverage X and Coverage Y**, the following is added to item 1.:

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

C. In **Section II Conditions**, subsection (a) is replaced by the following to the **What You Must Do After An Accidental Loss** provision:

- a) within 20 days following the loss, notify us or our agent in writing, stating:
- 1) your name and policy number;
 - 2) the date, the place and the circumstance of the loss;
 - 3) the name and address of anyone who might have a claim against an **insured person**;
 - 4) the names and addresses of any witnesses.

Failure to give such notice within 20 days will not invalidate any claim made by an **insured person** if:

- 1) that person can show it was not reasonably possible to notify us or our agent within the specified time; or
- 2) that such notice was given as soon as reasonably possible.

D. The **Action Against Us** provision is replaced by the following:

No one may bring an action against us unless there has been full compliance with all policy terms.

IV. In Section II—Optional Protection, the Coverage J—Extended Coverage on Jewelry, Watches and Furs, the following provision is added to the third paragraph that begins, "We do not cover loss caused by or consisting of"

We do not cover loss caused by or consisting of:

- a) intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
 - 1) may be reasonably expected to result from such acts; or
 - 2) is the intended result of such acts.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

All other policy terms and conditions apply.

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Agreements We Make With You

We make the following agreements with you:

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

1. **Bodily Injury**—means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
 - a) any venereal disease;
 - b) Herpes;
 - c) Acquired Immune Deficiency Syndrome (AIDS);
 - d) AIDS Related Complex (ARC);
 - e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

In addition, **bodily injury** does not include any symptom, effect, condition, disease or illness resulting in any manner from:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the **residence premises**.

2. **Building structure**—means a structure with walls and a roof.

3. **Business**—means:
 - a) any full- or part-time activity of any kind engaged in for economic gain including the use of any part of any premises for such purposes. The providing of home day care services to other than an **insured person** or relative of an **insured person** for economic gain is also a **business**.

However, the mutual exchange of home day care services is not considered a **business**;

- b) the rental or holding for rental of property by an **Insured person**. Rental of **your residence premises** is not considered a **business** when:
- 1) it is rented occasionally for residential purposes;
 - 2) a portion is rented to roomers or boarders, provided not more than two roomers or boarders reside on the **residence premises** at any one time; or
 - 3) a portion is rented as a private garage.
4. **Dwelling** — means the single family building structure identified as the insured property on the Policy Declarations, where **you** reside and which is principally used as a private residence.
5. **Insured person(s)** — means **you** and, if a resident of **your** household:
- a) any relative; and
 - b) any person under the age of 21 in **your** care.
- Under Coverage X — Family Liability Protection and Coverage Y — Guest Medical Protection, insured person also means:**
- a) any person or organization legally responsible for loss caused by animals or watercraft covered by this policy which are owned by an **Insured person**. We do not cover any person or organization using or having custody of animals or watercraft in any business, or without permission of the owner;
 - b) with respect to the use of any vehicle covered by this policy, any person while engaged in the employment of an **Insured person**.
6. **Insured premises** — means:
- a) the **residence premises**; and
 - b) under **Section II** only:
 - 1) the part of any other premises, other structures and grounds used by **you** as a residence. This includes premises, structures and grounds **you** acquire for **your** use as a private residence while this policy is in effect;
- 2) any part of a premises not owned by an **Insured person** but where an **Insured person** is temporarily living;
 - 3) cemetery plots or burial vaults owned by an **Insured person**;
 - 4) land owned by or rented to an **Insured person** where a single family dwelling is being built as that person's residence;
 - 5) any premises used by an **Insured person** in connection with the **residence premises**;
 - 6) any part of a premises occasionally rented to an **Insured person** for other than **business** purposes.
7. **Occurrence** — means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage**.
8. **Property damage** — means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.
9. **Remediation** — means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under **Coverage A — Dwelling Protection, Coverage B — Other Structures Protection or Coverage C — Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.
10. **Residence employee** — means an employee of an **Insured person** while performing duties arising out of and in the course of employment in connection with the maintenance or use of **your residence premises**. This includes

similar duties performed elsewhere for an **insured person**, not in connection with the **business** of an **insured person**.

11. **Residence premises** — means the **dwelling**, other structures and land located at the address stated on the Policy Declarations.
12. **We, us or our** — means the company named on the Policy Declarations.
13. **You or your** — means the person listed under Named Insured(s) on the Policy Declarations as the Insured and that person's resident spouse.

Insuring Agreement

In reliance on the information **you** have given **us**, **we** agree to provide the coverages indicated on the Policy Declarations. In return, **you** must pay the premium when due and comply with the policy terms and conditions, and inform **us** of any change in title, use or occupancy of the **residence premises**.

Subject to the terms of this policy, the Policy Declarations shows the location of the **residence premises**, applicable coverages, limits of liability and premiums. The policy applies only to losses or occurrences that take place during the policy period. The Policy Period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations as the Insured and on that person's resident spouse. Those persons are defined as **you** or **your**. This means that the responsibilities, acts and omissions of a person defined as **you** or **your** will be binding upon any other person defined as **you** or **your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Conformity To State Statutes

When the policy provisions conflict with the statutes of the state in which the **residence premises** is

located, the provisions are amended to conform to such statutes.

Coverage Changes

When **we** broaden coverage during the premium period without charge, **you** have the new features if **you** have the coverage to which they apply. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information **you** have given **us**. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, is incorrect or incomplete, **we** may adjust **your** coverage and premium accordingly during the premium period.

Any calculation of **your** premium or changes in **your** coverage will be made using the rules, rates and forms on file, if required, for **our** use in **your** state. The rates in effect at the beginning of **your** current premium period will be used to calculate any change in **your** premium.

Policy Transfer

You may not transfer this policy to another person without **our** written consent.

Continued Coverage After Your Death

If **you** die, coverage will continue until the end of the premium period for:

- 1) **your** legal representative while acting as such, but only with respect to the **residence premises** and property covered under this policy on the date of **your** death.
- 2) an **insured person**, and any person having proper temporary custody of **your** property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:

You may cancel this policy by notifying **us** of the future date **you** wish to stop coverage.

Our Right to Cancel:

We may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy

Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with us, we may cancel this policy for any reason by giving you at least 10 days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with us, we may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
- 4) there has been a substantial change or increase in hazard in the risk we originally accepted.

If the cancellation is for non-payment of premium, we will give you at least 10 days notice. If the cancellation is for any of the other reasons, we will give you at least 30 days notice.

Our mailing the notice of cancellation to you will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. Your return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not to Renew or Continue:

We have the right not to renew or continue the policy beyond the current premium period. If we do not intend to continue or renew the policy, we will mail you notice at least 30 days before the end of the premium period. Our mailing the notice of nonrenewal to you will be deemed proof of notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If we determine that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

What Law Will Apply

This policy is issued in accordance with the laws of the state in which the residence premises is located and covers property or risks principally located in that state. Subject to the following paragraph, the laws of the state in which the residence premises is located shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other occurrence for which coverage applies under this policy happens outside the state in which the residence premises is located, claims or disputes regarding that covered loss to property, or any other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered occurrence happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the residence premises is located. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the residence premises is located, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other occurrence for which coverage applies under this policy happens outside the state in which the residence premises is located, lawsuits regarding that covered loss to property, or any other covered occurrence may also be brought in the judicial district where that covered loss to property, or any other covered occurrence happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there has been full compliance with all policy terms.

Any action against us to which neither the **Action Against Us** provision located in **Section I Conditions** nor the **Action Against Us** provision located in **Section II Conditions** applies must be commenced within one year of the date the cause of action accrues.

If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an **Insured person** against us or us against an **Insured person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

- a) no arbitrator shall have the authority to award punitive damages or attorney's fees;
- b) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
- c) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Section I - Your Property

Coverage A

Dwelling Protection

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.
2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.
3. Wall-to-wall carpeting fastened to **your dwelling**.

Property We Do Not Cover Under Coverage A:

1. Any structure including fences or other property covered under **Coverage B - Other Structures Protection**.
2. Land.
3. Satellite dish antennas and their systems, whether or not attached to **your dwelling**.

Coverage B

Other Structures Protection

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.
2. Structures connected to **your dwelling** by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the address of the **residence premises** for use in connection with structures other than **your dwelling**.

4. Wall-to-wall carpeting fastened to **building structures** on the **residence premises** other than **your dwelling**.

Property We Do Not Cover Under Coverage B:

1. Structures used in whole or in part for **business purposes**.
2. Any structure or other property covered under **Coverage A—Dwelling Protection**.
3. Land.
4. Construction materials and supplies at the address of the **residence premises** for use in connection with the **dwelling**.
5. Satellite dish antennas and their systems, whether or not attached to **building structures**.

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection** except as limited or excluded in this policy.

**Coverage C
Personal Property Protection**

Property We Cover Under Coverage C:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located away from the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**.
2. At **your option**, personal property owned by a guest or **residence employee** while the property is in a residence **you** are occupying.

Limitations On Certain Personal Property:
Limitations apply to the following groups of personal property. If personal property can reasonably be

considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. \$50— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. \$200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. \$250— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
 - a) tapes;
 - b) CDs, DVDs and other discs;
 - c) records;
 - d) disks;
 - e) reels;
 - f) cassettes;
 - g) cartridges; or
 - h) programs.
4. \$500— Theft of tools and their accessories.
5. \$1,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value.
6. \$1,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not

include electronic data processing equipment or the recording or storage media used with that equipment.

7. \$1,000— Trading cards, subject to a maximum amount of \$250 per card.
8. \$1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.
9. \$1,000— Manuscripts, including documents stored on electronic media.
10. \$1,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.
11. \$1,000— Trailers not used with watercraft.
12. \$1,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.
13. \$1,500— Electronic data processing equipment and the recording or storage media used with that equipment whether or not the equipment is used in a business. Recording or storage media will be covered only up to:
 - a) the retail value of the media, if pre-programmed; or
 - b) the retail value of the media in blank or unexposed form, if blank or self-programmed.
14. \$2,000— Theft of firearms, their related equipment, and accessories.
15. \$2,500— Motorized land vehicles used solely for the service of the **Insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

16. \$2,500— Theft of goldware, silverware, pewterware and platinumware.

Property We Do Not Cover Under Coverage C:

1. Personal property specifically described and insured by this or any other insurance.
2. Animals.
3. Motorized land vehicles, including, but not limited to, any land vehicle powered or assisted by a motor or engine. **We do not cover** any motorized land vehicle parts, equipment or accessories attached to or located in or upon any motorized land vehicle. **We do cover** motorized land vehicles designed for assisting the disabled or used solely for the service of the **Insured premises** and not licensed for use on public roads subject to **Limitations On Certain Personal Property**, item 15.
4. Aircraft and aircraft parts. This does not include model or hobby craft not designed to carry people or cargo.
5. Property of roomers, boarders, or tenants not related to you.
6. Property located away from the **residence premises** and rented or held for rental to others.
7. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in Coverage C—Personal Property Protection, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.
2. Windstorm or Hail.

We do not cover:

- a) loss to covered property inside a **building structure**, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind

- forces rain, snow, sleet, sand or dust through the damaged roof or wall;
- b) loss to watercraft and their trailers, furnishings, equipment and motors unless inside a fully enclosed **building structure**. However, we do cover canoes and rowboats on the **residence premises**.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

We do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations.

8. Vandalism and Malicious Mischief.

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

9. Falling objects.

We do not cover loss to personal property inside a **building structure** unless the falling object first damages the exterior walls or roof of the **building structure**.

10. Weight of ice, snow or sleet which causes damage to personal property in a **building structure**, but only if the **building structure** is damaged due to the weight of ice, snow or sleet.

11. Increase or decrease of artificially generated electrical current to electronics, electrical appliances, fixtures and wiring.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system, an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

We do not cover loss at the **residence premises** under perils 12), 13), and 14) caused by or resulting from freezing while the **building structure** is vacant, unoccupied or under construction unless you have used reasonable care to:

- a) maintain heat in the **building structure**; or
- b) shut off the water supply and drain the water from the systems and appliances.

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

We do not cover:

- a) theft or attempted theft committed by an **insured person**;
- b) theft in or from the **residence premises** while under construction or of materials and supplies for use in construction, until the **dwelling** is completed and occupied;

- c) theft of any property while at any other residence owned, rented to or occupied by an **insured person** unless the **insured person** is temporarily residing there;
 - d) theft of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the **residence premises**;
 - e) theft from that part of the **residence premises** rented by you to other than an **insured person**.
16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any building structure on the **residence premises**. This does not include damage to the glass.

Additional Protection

1. **Additional Living Expense**

- a) We will pay the reasonable increase in living expenses necessary to maintain your normal standard of living when a direct physical loss we cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** makes your **residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** will be limited to the least of the following:

- 1) the time period required to repair or replace the property we cover, using due diligence and dispatch; or

- 2) if you permanently relocate, the shortest time for your household to settle elsewhere; or
- 3) 12 months.

Additional Living Expense will not exceed the amount indicated on your Policy Declarations.

- b) We will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss we insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

2. **Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money**

We will pay for loss:

- a) that an **insured person** is legally required to pay for the unauthorized use of any
 - 1) credit card;
 - 2) debit or automated teller machine card;
 - 3) bank fund transfer card;
 - 4) code;
 - 5) account number;
 - 6) personal identification number; or
 - 7) other means of account accessthat can be used, alone or in conjunction with items 1) through 7) above, to obtain money, goods, services, or any other thing

of value, or that can be used to initiate a transfer of funds.

- b) caused by forgery or alteration of a check or negotiable instrument made or drawn upon an **Insured person's** account;
- c) to an **Insured person** through acceptance in good faith of counterfeit United States or Canadian paper currency.

Our maximum limit of liability for any one loss is \$1,000, regardless of the number of persons involved. All loss due to forgery or unauthorized use by or involving any one person is considered one loss.

We do not cover:

- a) loss arising from any **business** of an **Insured person**;
- b) loss caused by or at the direction of an **Insured person** or any other person who has been entrusted with any credit card, debit or automated teller machine card, or bank fund transfer card;
- c) loss arising out of dishonesty of an **Insured person**.

When loss is discovered, the **Insured person** must give us immediate notice. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, the **Insured person** must also give immediate notice to the company or bank that issued the card. Failure to comply with the terms and conditions of the card voids this protection.

We will pay only for loss occurring during the policy period, including those losses discovered and reported to us within one year after the policy has terminated. We have the right to investigate and settle any claim or suit as we deem appropriate. Full payment of the amount of insurance for any one loss ends our obligation under each claim or suit arising from the loss.

When this coverage applies, **we** will defend any suit brought against an **Insured person** for the enforcement of payment that an **Insured person** is legally required to make as a result

of the unauthorized use of any credit card, debit or automated teller machine card, or bank fund transfer card issued to or registered in the name of an **Insured person**. The defense will be at **our** expense, with counsel of **our** choice.

When this coverage applies, **we** have the option to defend an **Insured person** or the **Insured person's** bank against a suit for the enforcement of payment legally required to be made as a result of forgery or alteration of a check or negotiable instrument made or drawn upon an **Insured person's** account. The defense will be at **our** expense, with counsel of **our** choice.

No deductible applies to this protection.

3. Debris Removal

We will pay reasonable expenses you incur to remove debris of covered property damaged by a loss we cover. If the loss to the covered property and the cost of debris removal are more than the Limit Of Liability shown on the Policy Declarations for the covered property, we will pay up to an additional 5% of that limit for debris removal.

4. Emergency Removal Of Property

We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from a premises because of danger from a loss we cover. Protection is limited to a 30-day period from date of removal. This protection does not increase the limit of liability that applies to the covered property.

5. Fire Department Charges

We will pay up to \$500 for service charges made by fire departments called to protect your property from a loss we cover at the residence premises. No deductible applies to this protection.

6. Temporary Repairs After A Loss

We will reimburse you up to \$5,000 for the reasonable and necessary cost you incur for temporary repairs to protect covered property from further imminent covered loss following a loss we cover. This coverage does not increase

the limit of liability applying to the property being repaired.

7. Trees, Shrubs, Plants and Lawns

We will pay up to 5% of the Limit Of Liability shown on the Policy Declarations under **Coverage A—Dwelling Protection** for loss to trees, shrubs, plants and lawns at the address of the **residence premises**. We will not pay more than \$500 for any one tree, shrub, or plant including expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned by an occupant of the **residence premises**, vandalism or malicious mischief, theft or collapse of a **building structure** or any part of a **building structure**.

We will pay up to \$500 for reasonable expenses you incur for the removal of debris of trees at the address of the **residence premises** for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**.

We do not cover trees, shrubs, plants, or lawns grown for **business** purposes.

This coverage does not increase the limit of liability applying to the damaged property.

8. Temperature Change

We will pay for loss to covered personal property in a **building structure** at the **residence premises** resulting from a change in temperature. The change in temperature must result from a covered loss to the **building structure**.

This coverage does not increase the limit of liability applying to the damaged property.

9. Power Interruption

We will pay up to \$500 for loss to the contents of freezers and refrigerated units on the

residence premises caused by the interruption of power which occurs off the **residence premises**. If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

10. Arson Reward

We will pay up to \$5,000 for information leading to an arson conviction in connection with a fire loss to property covered under **Section I** of this policy. The \$5,000 limit applies regardless of the number of persons providing information.

11. Collapse

We will cover at the **residence premises**:

- a) the entire collapse of a covered **building structure**;
- b) the entire collapse of part of a covered **building structure**; and
- c) direct physical loss to covered property caused by a) or b) above.

For coverage to apply, the collapse of a **building structure** specified in a) or b) above must be a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under **Section I, Coverage C—Personal Property Protection**;
- b) weight of persons, animals, equipment or contents;
- c) weight of rain, snow or ice which collects on a roof;
- d) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

Collapse as referenced herein means the covered **building structure** or part of the covered **building structure** has actually fallen down or fallen into pieces unexpectedly and

Instantaneously. It does not include settling, cracking, shrinking, bulging, expansion, sagging, or bowing. Furthermore, collapse does not include or mean substantial structural impairment or imminent collapse.

Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, fuel oil tank, septic tank, cistern or similar system, foundation, retaining wall, bulkhead, pier, wharf or dock is not included, unless the loss is a direct result of the collapse of a building structure or part of a building structure that is a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under Section I, Coverage C—Personal Property Protection;
- b) weight of persons, animals, equipment or contents; weight of rain, snow or ice which collects on a roof;
- c) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

This coverage does not increase the limit of liability applying to the covered property.

12. Land

If a sudden and accidental direct physical loss results in both a covered loss to the dwelling, other than the breakage of glass or safety glazing material, and a loss of land stability, we will pay up to \$10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of the dwelling sustaining the covered loss.

The Section I—Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

13. Lock Replacement

When a key to a lock is stolen as part of a covered theft loss, we will pay under Coverage A—Dwelling Protection the reasonable expenses you incur to replace or re-key exterior door locks at the residence premises with locks or cylinders of like kind and quality. The limit of liability under this coverage following any one theft loss is \$500.

This coverage does not increase the limit of liability that applies to the covered property.

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C

A We do not cover loss to the property described in Coverage A—Dwelling Protection or Coverage B—Other Structures Protection consisting of or caused by the following:

1. Freezing of:
 - a) plumbing, fire protective sprinkler systems, heating or air conditioning systems;
 - b) household appliances; or
 - c) swimming pools, hot tubs and spas within the dwelling, their filtration and circulation systems; or discharge, leakage or overflow from within a), b) or c) above, caused by freezing, while the building structure is vacant, unoccupied or being constructed unless you have used reasonable care to:
 - a) maintain heat in the building structure; or
 - b) shut off the water supply and drain the system and appliances.
2. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies to fences, pavements, patios, foundations, retaining walls, bulkheads, piers, wharves and docks. This exclusion also applies to swimming pools, hot tubs, spas, their filtration and circulation systems if the swimming pool, hot tub or spa is not located within a heated portion of the dwelling.

3. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
 - a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
 - b) from, within or around any plumbing fixtures, including, but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.
4. Collapse, except as specifically provided in Section I—Additional Protection under item 11, "Collapse."
5. Theft from **your residence premises** while **your dwelling** is under construction, or of materials and supplies for use in construction, until **your dwelling** is completed and occupied.
6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.
7.
 - a) wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
 - b) mechanical breakdown;
 - c) growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
 - d) rust or other corrosion;
 - e) contamination, including, but not limited to, the presence of toxic, noxious or hazardous gasses, chemicals, liquids, solids or other substances at the **residence premises** or in the air, land or water serving the **residence premises**;
 - f) smog, smoke from the manufacturing of any controlled substance,

agricultural smudging and industrial operations;

- g) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
- h) insects, rodents, birds or domestic animals. **We do cover the breakage of glass or safety glazing materials caused by birds; or**
- i) seizure by government authority.

If any of a) through h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within **your dwelling**, **we** cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, **we** will cover the cost of tearing out and replacing any part of **your dwelling** necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

8. Soil conditions, including, but not limited to, corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.

- B. **We do not cover loss to the property described in Coverage A—Dwelling Protection or Coverage B—Other Structures Protection when:**
 - 1) there are two or more causes of loss to the covered property; and
 - 2) the predominant cause(s) of loss is (are) excluded under items A.1 through A.8 above.
- C. **We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection consisting of or caused by the following:**

1. Flood, including, but not limited to, surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

2. Water or any other substance that:
 - a) backs up through sewers or drains; or
 - b) overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

3. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the **residence premises**.

We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 3 listed above.

4. Earth movement of any type, including, but not limited to, earthquake, volcanic eruption, lava flow, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water.

We do cover sudden and accidental direct physical loss caused by fire, explosion, theft or breakage of glass or safety glazing materials resulting from earth movement.

5. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any **building structure**, other structure or land at the **residence premises**.

We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

6. The failure by any **insured person** to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss **we** cover.
7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.
8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
 - a) may be reasonably expected to result from such acts; or
 - b) is the intended result of such acts.

This exclusion applies regardless of whether or not the insured person is actually charged with, or convicted of, a crime.

9. Weather Conditions that contribute in any way with a cause of loss excluded under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** to produce a loss.
10. Planning, Construction or Maintenance, meaning faulty, inadequate or defective:
 - a) planning, zoning, development, surveying, siting;
 - b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c) materials used in repair, construction, renovation or remodeling; or
 - d) maintenance

of property whether on or off the residence premises by any person or organization.

11. Vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

D. We do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** when:

- 1) there are two or more causes of loss to the covered property; and
- 2) the predominant cause(s) of loss is (are) excluded under items C.1. through C.11 above.

E. We do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided in **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

F. We do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following. These exclusions apply regardless of whether any other cause contributed concurrently or in any sequence to produce the loss:

1. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss by fire, explosion or smoke.

We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

2. War or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section I Conditions

1. Deductible

We will pay when a covered loss exceeds the applicable deductible shown on the Policy Declarations. We will then pay only the excess amount, unless we have indicated otherwise in this policy.

2. Insurable Interest and Our Liability

In the event of a covered loss, we will not pay for more than an insured person's insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. What You Must Do After A Loss

In the event of a loss to any property that may be covered by this policy, you must:

- a) immediately give us or our agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, give notice to the company or bank that issued the card.
- b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
- c) separate damaged from undamaged personal property. Give us a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give us all accounting records, bills, invoices and other vouchers, or certified copies, which we may reasonably request to examine and permit us to make copies.
- e) produce receipts for any increased costs to maintain your standard of living while

you reside elsewhere, and records supporting any claim for loss of rental income.

- f) as often as **we** reasonably require:
 - 1) show **us** the damaged property.
 - 2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.
 - 3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and
- g) within 60 days after the loss, give **us** a signed, sworn proof of the loss. This statement must include the following information:
 - 1) the date, time, location and cause of loss;
 - 2) the interest **insured persons** and others have in the property, including any encumbrances;
 - 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
 - 4) any other insurance that may cover the loss;
 - 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
 - 6) at **our** request, the specifications of any damaged **building structure** or other structure; and
 - 7) evidence supporting any claim under the Credit Card, Debit or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

4. Our Settlement Options

In the event of a covered loss, **we** have the option to:

- a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time; or
- b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 "How We Pay For A Loss."

Within 30 days after **we** receive **your** signed, sworn proof of loss **we** will notify **you** of the option or options **we** intend to exercise.

5. How We Pay For A Loss

Under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection and Coverage C—Personal Property Protection, payment for covered loss will be by one or more of the following methods:

- a) Special Payment. At **our** option, **we** may make payment for a covered loss before **you** repair, rebuild or replace the damaged, destroyed or stolen property if:
 - 1) the whole amount of loss for property covered under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, without deduction for depreciation, is less than \$2,500 and if the property is not excluded from the Building Structure Reimbursement provision, or;
 - 2) the whole amount of loss for property covered under Coverage C—Personal Property Protection, without deduction for depreciation, is less than \$2,500 and if **your** Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.
- b) Actual Cash Value. If **you** do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the Limit Of Liability shown on the Policy Declarations for the coverage that applies to the damaged,

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destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c) and paragraph d) below, if applicable, if you repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

- c) Building Structure Reimbursement. Under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under Section I, Conditions — Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss, and shall not be payable for any losses excluded in Section I—Your Property, under Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, section E.

Building Structure Reimbursement will not exceed the smallest of the following amounts:

- 1) the replacement cost of the part(s) of the building structure(s) for equivalent construction for similar use on the same residence premises;
- 2) the amount actually and necessarily spent to repair or replace the damaged building structure(s) with equivalent construction for similar

use on the same residence premises; or

- 3) the Limit Of Liability applicable to the building structure(s) as shown on the Policy Declarations for Coverage A—Dwelling Protection or Coverage B—Other Structures Protection, regardless of the number of building structures and structures other than building structures involved in the loss.

If you replace the damaged building structure(s) at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to building structures and the smallest of 1), 2) or 3) above.

Building Structure Reimbursement will not apply to:

- 1) property covered under Coverage C—Personal Property Protection;
- 2) property covered under Coverage B—Other Structures Protection that is not a building structure;
- 3) wall-to-wall carpeting, fences, awnings and outdoor antennas whether or not fastened to a building structure; or
- 4) land.

Payment under a), b), or c) above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction,

maintenance, repair, relocation or demolition of building structures or other structures.

- d) **Personal Property Reimbursement.** Under **Coverage C—Personal Property Protection**, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered personal property or wall-to-wall carpeting within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

- 1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
- 2) the cost of repair or restoration; or
- 3) the Limit Of Liability shown on the Policy Declarations for **Coverage C—Personal Property Protection**, or any special limit of liability described in the policy, regardless of the number of items of personal property involved in the loss.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Personal Property Reimbursement will not apply to:

- 1) property insured under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, except wall-to-wall carpeting;
- 2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
- 3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;

- 4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
- 5) motorized land vehicles used solely for the service of the Insured premises and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

6. Our Settlement Of Loss

We will settle any covered loss with you unless some other person or entity is named in the policy. We will settle within 60 days after the amount of loss is finally determined. This amount may be determined by an agreement between you and us, an appraisal award or a court judgment.

7. Appraisal

If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to you and to us the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other appraisal expenses.

8. Abandoned Property

We are not obligated to accept any property or responsibility for any property abandoned by an insured person.

9. Permission Granted To You

- a) The residence premises may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A building structure under construction is not considered vacant.
- b) You may make alterations, additions or repairs, and you may complete structures under construction.

10. Our Rights To Recover Payment

When we pay for any loss, an insured person's right to recover from anyone else becomes ours up to the amount we have paid. An insured person must protect these rights and help us enforce them. You may waive your rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of the loss.

11. Our Rights To Obtain Salvage

We have the option to take all or any part of the damaged or destroyed covered property upon replacement by us or payment of the agreed or appraised value.

We will notify you of our intent to exercise this option within 30 days after we receive your signed, sworn proof of loss. If no signed, sworn proof of loss is requested by us, we will notify you of our intent to exercise this option within 60 days after the date you report the loss to us.

When we settle any loss caused by theft or disappearance, we have the right to obtain all or part of any property which may be recovered. An insured person must protect this right and inform us of any property recovered. We will inform you of our intent to exercise this right within 10 days of your notice of recovery to us.

12. Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which Section I Conditions applies, unless:

- a) there has been full compliance with all policy terms; and
- b) the action is commenced within one year after the inception of loss or damage.

13. Loss To A Pair Or Set

If there is a covered loss to a pair or set, we may:

- a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
- b) pay the difference between the actual cash value of the pair or set before and after the loss.

14. Glass Replacement

Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

15. No Benefit To Ballee

This insurance will not benefit any person or organization who may be caring for or handling your property for a fee.

16. Other Insurance

If both this insurance and other insurance apply to a loss, we will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

17. Property Insurance Adjustment

When the Policy Declarations indicates that the Property Insurance Adjustment Condition applies, you agree that, at each policy anniversary, we may increase the Limit of Liability shown on the Policy Declarations for Coverage A—Dwelling Protection to reflect one of the following:

- a) the rate of change in the index identified in the "Important Payment and Coverage

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Information" section of the Policy Declarations. The limit of liability for **Coverage A—Dwelling Protection** for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the Index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest \$1000; or

- b) the minimum amount of insurance coverage we are willing to issue for the succeeding premium period under **Coverage A—Dwelling Protection** for your dwelling and other property we cover under **Coverage A—Dwelling Protection**.

Any adjustment in the limit of liability for **Coverage A—Dwelling Protection** will result in an adjustment in the limit of liability for **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection** in accordance with our manual of Rules and Rates.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by us at the time a change in limits is made.

We will not reduce the limit of liability shown on the Policy Declarations without your consent. You agree that it is your responsibility to ensure that each of the limits of liability shown on the Policy Declarations are appropriate for your insurance needs. If you want to increase or decrease any of the limits of liability shown on the Policy Declarations, you must contact us to request such a change.

18. Mortgagee

A covered loss will be payable to the Mortgagee(s) named on the Policy Declarations, to the extent of their interest and in the order of precedence. All provisions of **Section I** of this policy apply to these mortgagees.

We will:

- a) protect the mortgagee's interest in a covered building structure in the event of an increase in hazard, intentional or criminal acts of, or directed by, an insured person, failure by any insured person to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and
- b) give the mortgagee at least 10 days notice if we cancel this policy.

The mortgagee will:

- a) furnish proof of loss within 60 days after notice of the loss if an insured person fails to do so;
- b) pay upon demand any premium due if an insured person fails to do so;
- c) notify us in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- d) give us the mortgagee's right of recovery against any party liable for loss; and
- e) after a loss, and at our option, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee or loss payee or other secured party.

19. Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss

In the event of a covered water loss under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection**, we will pay up to \$5,000 for mold, fungus, wet rot or dry rot remediation.

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures**

Protection or Coverage C—Personal Property Protection damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain your normal standard of living if mold, fungus, wet rot or dry rot makes your residence premises uninhabitable. Remediation also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection.**

Section II—Family Liability and Guest Medical Protection

Coverage X Family Liability Protection

Losses We Cover Under Coverage X:

Subject to the terms, conditions and limitations of this policy, we will pay damages which an **Insured person** becomes legally obligated to pay because of **bodily injury or property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an **Insured person**. If an **Insured person** is sued for these damages, we will provide a defense with counsel of our choice, even if the allegations are groundless, false or fraudulent. We are not obligated to defend any suit or pay any claim or judgment after we have exhausted our limit of liability.

Coverage Y Guest Medical Protection

Losses We Cover Under Coverage Y:

We will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses,

hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an **occurrence** causing **bodily injury** to which this policy applies, and is covered by this part of the policy.

Each person who sustains **bodily injury** is entitled to this protection when that person is:

1. on the **Insured premises** with the permission of an **Insured person**; or
2. off the **Insured premises**, if the **bodily injury**:
 - a) arises out of a condition on the **Insured premises** or immediately adjoining ways;
 - b) is caused by the activities of an **Insured person** or a **residence employee**;
 - c) is caused by an animal owned by or in the care of an **Insured person**; or
 - d) is sustained by a **residence employee**.

Additional Protection

We will pay, in addition to the limits of liability:

1. Claim Expense

We will pay:

- a) all costs we incur in the settlement of any claim or the defense of any suit against an **Insured person**;
- b) interest accruing on damages awarded until such time as we have paid, formally offered, or deposited in court the amount for which we are liable under this policy; interest will be paid only on damages which do not exceed our limits of liability;
- c) premiums on bonds required in any suit we defend; we will not pay bond premiums in an amount that is more than our limit of liability; we have no obligation to apply for or furnish bonds;
- d) up to \$150 per day for loss of wages and salary, when we ask you to attend trials and hearings;
- e) any other reasonable expenses incurred by an **Insured person** at our request.

2. Emergency First Aid

We will pay reasonable expenses incurred by an **Insured person** for first aid to other persons at the time of an accident involving **bodily injury** covered under this policy.

3. Damage To Property Of Others

At your request, we will pay up to \$500 each time an **Insured person** causes **property damage** to someone else's property. At our option, we will pay the cost to either repair or replace the property damaged by an **Insured person**, without deduction for depreciation.

We will not pay for **property damage**:

- a) to property covered under Section I of this policy;
- b) to property intentionally damaged by an **Insured person** who has attained the age of 13;
- c) to property owned by or rented to an **Insured person**, any tenant of an **Insured person**, or any resident in your household; or
- d) arising out of:
 - 1) past or present **business activities**;
 - 2) any act or omission in connection with a premises, other than an **Insured premises**, owned, rented or controlled by an **Insured person**; or
 - 3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

Losses We Do Not Cover Under Coverage X and Coverage Y

A. Losses We Do Not Cover Under Coverage X:

1. We do not cover **bodily injury** to an **Insured person** or **property damage** to property owned by an **Insured person** whenever any benefit of this coverage would accrue directly or indirectly to an **Insured person**.
2. We do not cover any **property damage** consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.
3. We do not cover any **bodily injury** or **property damage** arising out of any liability statutorily imposed upon any **Insured person** in any manner, consisting

of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

4. We do not cover any liability an **Insured person** assumes arising out of any contract or agreement.

5. We do not cover **property damage** to property rented to, occupied or used by, or in the care of, an **Insured person**. This exclusion does not apply if the **property damage** is caused by fire, explosion or smoke.

6. We do not cover any liability imposed upon any **Insured person** by any governmental authority for **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

B. Losses We Do Not Cover Under Coverage Y:

1. We do not cover **bodily injury** to any **Insured person** or regular resident of the **Insured premises**. However, this exclusion does not apply to a residence employee.
2. We do not cover **bodily injury** to any person on the **Insured premises** because of a **business activity** or professional service conducted there.

C. Losses We Do Not Cover Under Coverage X and Coverage Y:

Coverage under Coverage X—Family Liability Protection will be excluded for **bodily injury** and **property damage** and coverage under Coverage Y—Guest Medical Protection will be excluded for **bodily injury** as follows:

1. We do not cover any **bodily injury** or **property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or

omissions of, any **insured person**. This exclusion applies even if:

- a) such **insured person** lacks the mental capacity to govern his or her conduct;
- b) such **bodily injury or property damage** is of a different kind or degree than intended or reasonably expected; or
- c) such **bodily injury or property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

- 2. We do not cover **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured person** under any worker's compensation, non-occupational disability or occupational disease law.

- 3. We do not cover **bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of aircraft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

- 4. We do not cover **bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:

- a) a motor vehicle in dead storage or used exclusively on an **insured premises**;
- b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an **insured person** and is

being used away from an **insured premises**;

- c) a motorized wheel chair;
- d) a vehicle used to service an **insured premises** which is not designed for use on public roads and not subject to motor vehicle registration;
- e) a golf cart owned by an **insured person** when used for golfing purposes;
- f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
- g) lawn or garden implements under 40 horsepower;
- h) **bodily injury** to a **residence employee**.

- 5. We do not cover **bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of watercraft away from an **insured premises** if the watercraft:

- a) has inboard or inboard-outboard motor power of more than 50 horsepower;
- b) is a sailing vessel 26 feet or more in length;
- c) is powered by one or more outboard motors with more than 25 total horsepower;
- d) is designated as an airboat, air cushion, or similar type of watercraft; or
- e) is a personal watercraft, meaning a craft propelled by a water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

- 6. We do not cover **bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of hovercrafts. This exclusion does not

apply to **bodily injury** to a **residence employee**.

7. We do not cover **bodily injury** or **property damage** arising out of:
- the negligent supervision by any **insured person** of any person; or
 - any liability statutorily imposed on any **insured person**

arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any aircraft, watercraft, hovercraft, motorized land vehicle or trailer which is not covered under **Section II** of this policy.

8. We do not cover any **bodily injury** which results in any manner from the discharge, dispersal, release or escape of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

We do cover **bodily injury** which results from such discharge if the discharge is sudden and accidental.

9. We do not cover **bodily injury** or **property damage** arising out of the rendering of, or failure to render, professional services by an **insured person**.

10. We do not cover **bodily injury** or **property damage** arising out of the past or present **business activities** of an **insured person**.

We do cover the occasional or part-time **business activities** of an **insured person** who is a student under 21 years of age who is self-employed and has no employees.

11. We do not cover **bodily injury** or **property damage** arising out of any premises, other than an **insured premises**, owned, rented or controlled by an **insured person**. This

exclusion does not apply to **bodily injury** to a **residence employee**.

12. We do not cover **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

13. We do not cover **bodily injury** or **property damage** caused by war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section II Conditions

1. **What You Must Do After An Accidental Loss**

In the event of **bodily injury** or **property damage**, you must do the following:

- Promptly notify us or our agent stating:
 - your name and policy number;
 - the date, the place and the circumstances of the loss;
 - the name and address of anyone who might have a claim against an **insured person**;
 - the names and addresses of any witnesses.
- Promptly send us any legal papers relating to the accident.
- At our request, an **insured person** will:
 - cooperate with us and assist us in any matter concerning a claim or suit;
 - help us enforce any right of recovery against any person or organization who may be liable to an **insured person**;
 - attend any hearing or trial.
- Under the **Damage To Property Of Others** protection, give us a sworn statement of the loss. This must be made within 60 days after the date of loss. Also, an **insured person** must be prepared to show us any damaged property under that person's control.

Any **insured person** will not voluntarily pay any money, assume any obligations or incur any expense, other than for first aid to others

at the time of the loss as provided for in this policy.

2. What An Injured Person Must Do — Coverage Y — Guest Medical Protection

If someone is injured, that person, or someone acting for that person, must do the following:

- a) Promptly give us written proof of the loss. If we request, this must be done under oath.
- b) Give us written authorization to obtain copies of all medical records and reports.
- c) Permit doctors we select to examine the injured person as often as we may reasonably require.

3. Our Payment Of Loss — Coverage Y — Guest Medical Protection

We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by us or an insured person.

4. Our Limits Of Liability

Regardless of the number of insured persons, injured persons, claims, claimants or policies involved, our total liability under Coverage X — Family Liability Protection for damages resulting from one occurrence will not exceed the Limit Of Liability shown on the Policy Declarations. All bodily injury and property damage resulting from continuous or repeated exposure to the same general conditions is considered the result of one occurrence. Our total liability under Coverage Y — Guest Medical Protection for all medical expenses payable for bodily injury, to any one person, shall not exceed the "each person" Limit Of Liability shown on the Policy Declarations.

5. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

6. Our Rights to Recover Payment — Coverage X — Family Liability Protection

When we pay any loss, an insured person's right to recover from anyone else becomes

ours up to the amount we have paid. An insured person must protect these rights and help us enforce them.

7. Action Against Us

- a) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, unless there has been full compliance with all policy terms.
- b) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Coverage X — Family Liability Protection, unless the obligation of an insured person to pay has been finally determined either by judgment against the insured person after actual trial, or by written agreement of the insured person, injured person and us, and the action against us is commenced within one year of such judgment or agreement.
- c) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Coverage Y — Guest Medical Protection, unless such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred.
- d) No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Section II — Additional Protection, unless such action is commenced within one year after the date the claim expenses or emergency first aid expenses for which coverage is sought were actually incurred, or within one year after the date of loss to the property if coverage is being sought under the Damage to Property of Others provision.
- e) No one shall have any right to make us a party to an action to determine the liability of an insured person.

8. Other Insurance—Coverage X—Family Liability Protection

This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III—Optional Protection

Optional Coverages You May Buy

The following Optional Coverages may supplement coverages found in **Section I** or **Section II** and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. Coverage BC

Building Codes

We will pay up to 10% of the amount of insurance on the Policy Declarations under **Coverage A—Dwelling Protection** to comply with local building codes after a covered loss to the dwelling or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of the dwelling.

2. Coverage BP

Increased Coverage On Business Property

The limitation on business property located on the residence premises, under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations. This increased coverage includes property held as samples or for sale or delivery after sale, while the property is on the residence premises.

3. Coverage DP

Increased Coverage On Electronic Data Processing Equipment

The limitation on electronic data processing equipment under **Coverage C—Personal Property Protection**, and the recording or storage media used with that equipment, is

increased to the amount shown on the Policy Declarations.

4. Coverage F

Fire Department Charges

The \$500 limit applying to the fire department service charges under **Additional Protection** is increased to the amount shown on the Policy Declarations.

5. Coverage G

Loss Assessments

If your residence premises includes a building structure which is constructed in common with one or more similar buildings, and you are a member of, and subject to the rules of, an association governing the areas held in common by all building owners as members of the association, the **insured premises** means the building structure occupied exclusively by your household as a private residence, including the grounds, related structures and private approaches to them.

We will pay your share of any special assessments charged against all building owners by the association up to the Limit Of Liability shown on the Policy Declarations, when the assessment is made as a result of:

- a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss we cover under **Section I** of this policy; or
- b) bodily injury or property damage covered under **Section II** of this policy.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

We will pay only when the assessment levied against the insured person, as a result of any one loss, for bodily injury or property damage exceeds \$250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to **Section I** of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to Sections I and II of this policy and the Section I and II Conditions, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

6. **Coverage J
Extended Coverage On Jewelry, Watches and Furs**

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to the following property, subject to the provisions in this coverage:

- a) jewelry, watches, gems, precious and semi-precious stones, gold, platinum; and
- b) furs, including any item containing fur which represents its principal value.

The total amount of coverage and per item limit is shown on the Policy Declarations. This amount is not in addition to the amount of insurance applying to **Coverage C—Personal Property Protection**. However, in no event will coverage be less than would have applied in the absence of **Coverage J**.

We do not cover loss caused by or consisting of:

- a) intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
 - 1) may be reasonably expected to result from such acts; or
 - 2) is the intended result of such acts.
- b) wear and tear, gradual deterioration, inherent vice, insects or vermin;
- c) nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.
- d) war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

- e) failure by any **insured person** to take all reasonable steps to preserve property during and after a loss or when the property is endangered by a cause of loss we cover.

Any deductible shown on the Policy Declarations applicable to **Coverage C—Personal Property Protection**, also applies to a loss under this coverage.

7. **Coverage K
Incidental Office, Private School Or Studio**

- a) The limits applying to property used or intended for use in a **business** under **Coverage C—Personal Property Protection** do not apply to equipment, supplies and furnishings used in a described office, private school or studio at **your residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

The **Coverage K** limits are shown on the Policy Declarations. The first limit applies to property on the **residence premises**. The second limit applies to property while away from the residence premises. These limits are not in addition to **Coverage C—Personal Property Protection, Limitations On Certain Personal Property** on property used or intended for use in a **business**. The increased coverage does not include property held for sample, sale or delivery after sale.

- b) **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection** are extended to cover a described office, private school or studio occupied by an **insured person**. The occupancy of the described property shall not be considered a **business**.

We do not cover **bodily injury** to:

- a) any employee other than a **residence employee**; or

- b) any person arising out of corporal punishment administered by or at the direction of an **insured person**.

8. Coverage M

Increased Coverage On Money

The limitation on money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

9. Coverage P

Business Pursuits

Coverage X—Family Liability Protection and **Coverage Y—Guest Medical Protection** are extended to cover specified business pursuits of an **insured person**.

We do not cover:

- a) **bodily injury** or **property damage** arising out of the business pursuits of an **insured person** when the business is owned or financially controlled by the **insured person**. This also means a partnership or joint venture of which an **insured person** is a partner or member;
- b) **bodily injury** or **property damage** arising out of the rendering of or failure to render a professional service of any nature, other than teaching;
- c) **bodily injury** to a fellow employee of an **insured person** arising out of and in the course of employment;
- d) **bodily injury** or **property damage** when an **insured person** is a member of a teaching staff or faculty of any school or college and the **bodily injury** or **property damage** arises out of the maintenance or use of saddle animals, vehicles used with

saddle animals, motorized land vehicles, hovercrafts, aircraft or watercraft when owned, hired or operated by an **insured person** or used for the purpose of instruction; or

- e) **bodily injury** to any person arising out of corporal punishment administered by or at the direction of an **insured person** when an **insured person** is a member of the teaching staff or faculty of any school of instruction.

10. Coverage S

Increased Coverage On Securities

The \$1,000 limitation on accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property, covered under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations.

11. Coverage SD

Satellite Dish Antennas

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to satellite dish antennas and their systems on your residence premises, subject to the provisions of **Coverage C—Personal Property Protection**.

The amount of coverage is shown on the Policy Declarations.

12. Coverage ST

Increased Coverage On Theft Of Silverware

The limitation on theft of goldware, silverware, pewterware and platinumware under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Extended Protection Amendatory Endorsement — APC270

I. In Section I—Your Property, Coverage C—Personal Property Protection is revised as follows:

A. In Property We Cover Under Coverage C, item 1, is replaced by the following:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located at a residence other than the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**. This limitation does not apply to personal property in a newly acquired principal residence for the 30 days immediately after you begin to move property there, personal property in use at a temporary residence when a direct physical loss we cover makes your **residence premises** uninhabitable, or to personal property in student dormitory, fraternity or sorority housing.

B. The **Limitations On Certain Personal Property** provision is replaced by the following:

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. \$200— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. \$200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. \$500— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
 - a) tapes;
 - b) CDs, DVDs and other discs;
 - c) records;
 - d) disks;
 - e) reels;
 - f) cassettes;
 - g) cartridges; or
 - h) programs.

4. \$1,000— Trading cards, subject to a maximum amount of \$250 per card.
5. \$1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.
6. \$1,000— Manuscripts, including documents stored on electronic media.
7. \$1,000— Trailers not used with watercraft.
8. \$2,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.
9. \$2,000— Property used or intended for use in a business, including property held as samples or for sale or delivery after sale, while the property is on the residence premises. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
10. \$2,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.
11. \$10,000— Motorized land vehicles used solely for the service of the insured premises and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.
12. \$3,000— Theft of firearms, their related equipment, and accessories.
13. \$5,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value, subject to a maximum amount of \$1,000 per item.
14. \$2,500— Theft of goldware, silverware, pewterware and platinumware.
15. \$10,000— Theft of tools and their accessories.

II. In Section I—Your Property, Additional Protection is revised as follows:

A. Item 1. Additional Living Expense is replaced by the following:

1. Additional Living Expense

- a) We will pay the reasonable increase in living expenses necessary to maintain your normal standard of living when a direct physical loss we cover under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection makes your residence premises uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** will be limited to the least of the following:

- 1) the time period required to repair or replace the property we cover, using due diligence and dispatch; or
 - 2) if you permanently relocate, the shortest time for your household to settle elsewhere; or
 - 3) 12 months.
- b) We will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss we insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

B. Item 9. **Power Interruption** is replaced by the following:

9. **Power Interruption**

We will pay for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises**. If a power interruption is known to an insured person, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

III. **Building Structure Reimbursement Extended Limits**

In **Section I—Conditions, item 5., How We Pay For A Loss**, under c) Building Structure Reimbursement we will replace item 3) if, at the time of the loss, you have met the following conditions:

- A. Insure your **dwelling**, attached structures and detached **building structures** to 100% of replacement cost as determined by our estimate completed and based on the accuracy of information you furnished;
- B. Have accepted the Property Insurance Adjustment Condition, agree to accept each annual adjustment in the **Coverage A—Dwelling Protection** limit of liability, and pay any additional premium charged; and
- C. Notify us within 80 days of the start of any modifications that increase the aggregate value of your **dwelling**, attached structures and detached **building structures** at the **residence premises** by \$5,000 or more, and pay any resulting additional premium due for the increase in value.

If, at the time of a covered loss, you meet all of the conditions in A., B., and C. above, then in **Section I—Conditions, item 5., How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) is replaced with:

- 3) 120% of the Limit Of Liability applicable to the building structure(s) as shown on the Policy Declarations for Coverage A—Dwelling Protection or Coverage B—Other Structures Protection, regardless of the number of building structures and structures other than building structures involved in the loss.

If, at the time of a covered loss, you fail to meet any of the conditions in A., B., and C. above, then in Section I—Conditions, item 5., How We Pay For A Loss, under c) Building Structure Reimbursement, item 3) remains:

- 3) the Limit Of Liability applicable to the building structure(s) as shown on the Policy Declarations for Coverage A—Dwelling Protection or Coverage B—Other Structures Protection, regardless of the number of building structures and structures other than building structures involved in the loss.

IV. In Section II—Family Liability and Guest Medical Protection, under Additional Protection, item 3 is replaced by the following:

3. **Damage To Property Of Others**

At your request, we will pay up to \$1,000 each time an Insured person causes property damage to someone else's property. At our option, we will pay the cost to either repair or replace the property damaged by an Insured person, without deduction for depreciation.

We will not pay for property damage:

- a) to property covered under Section I of this policy;
- b) to property intentionally damaged by an Insured person who has attained the age of 13;
- c) to property owned by or rented to an Insured person, any tenant of an Insured person, or any resident in your household; or
- d) arising out of:
 - 1) past or present business activities;
 - 2) any act or omission in connection with a premises, other than an Insured premises, owned, rented or controlled by an Insured person; or
 - 3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Scheduled Personal Property Endorsement -- APC273

WHERE COVERAGE APPLIES

WE will cover the described property anywhere in the world. HOWEVER, COVERAGE ON FINE ARTS, FIREARMS AND BUSINESS PERSONAL PROPERTY IS LIMITED TO WITHIN THE UNITED STATES OF AMERICA AND CANADA.

SPECIAL PROVISIONS AND CONDITIONS:

1. Musical Instruments: **YOU** agree that none of the musical instruments covered will be played for remuneration unless this is indicated in the schedule and an additional premium paid.
2. Silverware: This classification includes silverware, silver-platedware, goldware, gold-platedware and pewterware. IT DOES NOT INCLUDE PENS, PENCILS, FLASKS, SMOKING IMPLEMENTS OR ACCESSORIES, OR ITEMS OF JEWELRY.
3. Fine Arts: **YOU** agree that covered fine arts will be packed and unpacked by competent packers.
4. Golfer's Equipment: Coverage on golfer's equipment owned by an **INSURED PERSON** includes golf clubs, golf clothing and equipment, BUT DOES NOT INCLUDE JEWELRY, WATCHES AND EQUIPMENT FOR SALE. Coverage also applies to **YOUR** other clothing while contained in any locker at the premises where **YOU** are playing golf. GOLF BALLS ARE COVERED ONLY FOR LOSS BY FIRE OR BY BURGLARY PROVIDED, IN THE CASE OF BURGLARY, THERE ARE VISIBLE MARKS OF FORCIBLE ENTRY INTO THE BUILDING, ROOM OR LOCKER CONTAINING THE GOLF BALLS.
5. Stamp and Coin Collections: Coverage on postage stamps includes due, envelope, official, revenue, match and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property an **INSURED PERSON** owns or controls. This includes the books, pages and mountings.

Coverage on rare and current coins includes medals, paper money, bank notes, tokens or money and other numismatic property an **INSURED PERSON** owns or controls. This includes albums, containers, frames, cards, and display cabinets used with the coin collections.
6. Business Personal Property: This classification includes hand tools and portable power tools owned by an **INSURED PERSON** and used in that person's **BUSINESS**. WE WILL NOT COVER THE FOLLOWING PROPERTY:
(A) SPARE PARTS, UNLESS ATTACHED TO THE COVERED PROPERTY OR SPECIFICALLY DESCRIBED IN THIS ENDORSEMENT;
(B) ELECTRICAL APPLIANCES OR DEVICES, INCLUDING WIRING, DAMAGED DUE TO ELECTRICAL INJURY DISTURBANCES, CAUSED BY ARTIFICIALLY GENERATED ELECTRICAL CURRENTS, UNLESS FIRE FOLLOWS AND THEN ONLY LOSS OR DAMAGE CAUSED BY FIRE IS COVERED.
7. DOUBLE RECOVERY: WE WILL NOT PAY FOR ANY LOSS IF AN **INSURED PERSON** HAS COLLECTED FOR THE SAME LOSS FROM OTHERS.

NEWLY ACQUIRED PROPERTY

THIS PROVISION APPLIES ONLY TO THE JEWELRY, FURS, CAMERAS AND MUSICAL INSTRUMENTS CLASSES WHEN SIMILAR PROPERTY IS ALREADY DESCRIBED AND SCHEDULED IN THIS ENDORSEMENT.

WE WILL ONLY COVER NEWLY ACQUIRED PROPERTY OF AN **INSURED PERSON** FOR ITS ACTUAL VALUE PROVIDED YOU REPORT THE NEWLY ACQUIRED PROPERTY TO US WITHIN 30 DAYS OF ACQUISITION AND PAY THE ADDITIONAL PREMIUM FROM THE DATE ACQUIRED.

COVERAGE FOR EACH CLASS OF PROPERTY TO WHICH THIS PROVISION APPLIES WILL NOT EXCEED 25% OF THE AMOUNT OF INSURANCE FOR THAT CLASS OF PROPERTY OR \$10,000, WHICHEVER IS LESS.

EXCLUSIONS—LOSSES WE DO NOT COVER

1. WE WILL NOT COVER LOSS OR DAMAGE TO THE DESCRIBED PROPERTY CAUSED BY WEAR AND TEAR, GRADUAL DETERIORATION, INSECTS, VERMIN OR INHERENT VICE.
2. WE WILL NOT COVER LOSS OR DAMAGE CAUSED BY NUCLEAR ACTION, MEANING NUCLEAR REACTION, DISCHARGE OR RADIATION OR RADIOACTIVITY, OR ANY CONSEQUENCE OF ANY OF THESE. LOSS BY NUCLEAR ACTION IS NOT CONSIDERED LOSS BY FIRE, EXPLOSION OR SMOKE. DIRECT LOSS BY FIRE RESULTING FROM NUCLEAR ACTION IS COVERED.
3. WE WILL NOT COVER LOSS OR DAMAGE CAUSED BY WAR OR WARLIKE ACTS, INCLUDING INSURRECTION, REBELLION, OR REVOLUTION.
4. If Fine Arts are covered, WE WILL NOT COVER:
 - (A) LOSS OR DAMAGE CAUSED BY ANY REPAIRING, RESTORATION OR RETOUCHING PROCESS;
 - (B) BREAKAGE OF ART GLASS WINDOWS, STATUARY, MARBLES, GLASSWARE, BRIC-A-BRAC, PORCELAINS AND SIMILAR FRAGILE ITEMS, UNLESS CAUSED BY FIRE, LIGHTNING, WINDSTORM, AIRCRAFT, THEFT OR ATTEMPTED THEFT, EARTHQUAKE, FLOOD, EXPLOSION, MALICIOUS DAMAGE, OR COLLISION, DERAILMENT OR OVERTURN OF CONVEYANCE, OR UNLESS COVERAGE FOR BREAKAGE IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
 - (C) PROPERTY ON EXHIBITION AT FAIR GROUNDS OR ON ANY NATIONAL OR INTERNATIONAL EXPOSITION PREMISES, UNLESS OTHERWISE INDICATED IN THIS ENDORSEMENT.
5. If Sports Equipment, other than golf equipment, is covered, WE WILL NOT COVER LOSS OR DAMAGE CAUSED BY:
 - (A) ANY REFINISHING, RENOVATING OR REPAIRING PROCESS; DAMPNES OR EXTREMES OF TEMPERATURE; OR, RUST FOULING OR EXPLOSION OF FIREARMS;
 - (B) BREAKAGE, MARRING, SCRATCHING, TEARING OR DENTING UNLESS CAUSED BY FIRE, THEFT OR ACCIDENTS TO CONVEYANCES; OR
 - (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES OR PERSONS TO WHOM THE COVERED PROPERTY MAY BE ENTRUSTED OR RENTED.
6. If Stamp or Coin Collections are covered, WE WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
 - (A) FADING, CREASING, DENTING, SCRATCHING, TEARING, THINNING, TRANSFER OF COLORS, INHERENT DEFECT, DAMPNES, EXTREMES OF TEMPERATURE, GRADUAL DEPRECIATION, OR DAMAGE SUSTAINED FROM HANDLING OR WHILE BEING ACTUALLY WORKED ON;
 - (B) MYSTERIOUS DISAPPEARANCE OF INDIVIDUAL STAMPS, COINS OR OTHER INDIVIDUAL ITEMS WE COVER UNLESS SPECIFICALLY DESCRIBED WITH A DEFINITE AMOUNT SET OPPOSITE THEIR DESCRIPTION, OR IF

- NOT SPECIFICALLY DESCRIBED, UNLESS MOUNTED IN A VOLUME, AND THE PAGE TO WHICH THEY ARE ATTACHED IS ALSO LOST;
- (C) THEFT FROM ANY UNATTENDED AUTOMOBILE EXCEPT WHILE BEING SHIPPED BY REGISTERED MAIL UNLESS COVERAGE FOR EXTENDED THEFT IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
 - (D) LOSS TO PROPERTY IN THE CUSTODY OF TRANSPORTATION COMPANIES; NOR SHIPMENTS BY MAIL UNLESS BY REGISTERED MAIL; OR
 - (E) LOSS TO ANY PROPERTY DESCRIBED IN THE SCHEDULE WHICH IS NOT AN ACTUAL PART OF A STAMP, COIN OR NUMISMATIC COLLECTION.
7. If Business Personal Property is covered, **WE WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:**
- (A) FREEZING, CONTAMINATION, DAMPNES OF ATMOSPHERE, EXTREMES OF TEMPERATURES, CORROSION OR RUST;
 - (B) BREAKAGE, MARRING, SCRATCHING, CHIPPING OR DENTING, UNLESS CAUSED BY FIRE, EXPLOSION, THEFT, WINDSTORM, EARTHQUAKE, FLOOD, VANDALISM, MALICIOUS MISCHIEF, OR COLLISION, DERAILMENT OR OVERTURNING OF THE TRANSPORTING CONVEYANCE;
 - (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES, WHETHER IN THE SCOPE OF EMPLOYMENT OR NOT, OR ANY PERSON TO WHOM THE PROPERTY IS ENTRUSTED (EXCEPT CARRIERS FOR HIRE);
 - (D) MECHANICAL OR STRUCTURAL FAILURE OF TOOLS, OR BREAKDOWN, DEFECT OR FAILURE OF MACHINES OR POWER TOOLS;
 - (E) THEFT OF TOOLS FROM AN UNATTENDED VEHICLE UNLESS THE VEHICLE IS SECURELY CLOSED AND LOCKED AND EVIDENCE OF FORCIBLE ENTRY IS VISIBLE OR THE ENTIRE VEHICLE IS STOLEN OR UNLESS THE INSURED PROPERTY IS IN THE CUSTODY OF A COMMON CARRIER;
 - (F) ANY PROCESS OR SERVICE RESULTING IN SHRINKAGE, CHANGE IN COLOR, FINISH OR OTHER CHANGE IN THE DESCRIBED PROPERTY; OR
 - (G) DISCLOSURE OF ANY INVENTORY SHORTAGE.

HOW WE SETTLE A LOSS

1. UNLESS OTHERWISE PROVIDED IN THIS ENDORSEMENT:
 - (A) THE VALUE OF THE COVERED PROPERTY WILL BE DETERMINED AT THE TIME OF LOSS; AND
 - (B) LOSS OR DAMAGE TO COVERED PERSONAL PROPERTY WILL BE SETTLED ON AN ACTUAL CASH VALUE BASIS. THIS MEANS THERE MAY BE A DEDUCTION FOR DEPRECIATION. PAYMENT WILL NOT EXCEED THE AMOUNT NECESSARY TO REPAIR OR REPLACE THE DAMAGED ITEM(S) WITH PROPERTY OF LIKE KIND AND QUALITY, OR THE AMOUNT OF INSURANCE, WHICHEVER IS LESS.
2. Loss to covered Fine Arts will be settled as follows:
 - (A) **WE WILL PAY THE AMOUNT OF INSURANCE SHOWN FOR EACH DESCRIBED ITEM AND WE AGREE IT IS THE VALUE OF THE ITEM FOR THE PURPOSE OF LOSS SETTLEMENT.**
 - (B) IF THERE IS A LOSS TO A PAIR OR SET, **WE AGREE TO PAY THE AMOUNT OF INSURANCE FOR THE DESCRIBED PAIR OR SET. YOU AGREE TO GIVE US THE REMAINING ITEM OR ITEMS.**
3. Loss to covered Stamps and Coins will be settled as follows:
 - (A) **WE WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY ONE STAMP, COIN OR OTHER INDIVIDUAL ITEM IN CASE OF LOSS OR DAMAGE TO THAT ITEM.**
 - (B) Loss to covered property described as pairs, strips, blocks, series, sheets, covers, frames or cards will be settled as follows:
 - (1) IF THERE IS A TOTAL LOSS, **WE WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE THE ITEM INVOLVED.**

- (2) IF THERE IS A PARTIAL LOSS, WE WILL PAY THE ACTUAL CASH MARKET VALUE OF THE WHOLE SET, LESS THE CASH MARKET VALUE OF THE REMAINDER AT THE TIME OF LOSS, BUT NOT MORE THAN THE AMOUNT OF INSURANCE SET OPPOSITE THE PROPERTY INVOLVED. HOWEVER, IF THE COVERED PROPERTY INVOLVED IS INSURED FOR LESS THAN THE CASH MARKET VALUE, WE WILL ONLY PAY THE PROPORTION THAT THE AMOUNT OF INSURANCE BEARS TO THE CASH MARKET VALUE.
 - (C) When coins or stamps are covered on a blanket basis, WE WILL PAY THE CASH MARKET VALUE AT THE TIME OF LOSS NOT EXCEEDING \$1,000 ON ANY UNSCHEDULED NUMISMATIC PROPERTY, AND NOT MORE THAN \$250 FOR ONE STAMP, COIN OR INDIVIDUAL ITEM, OR ANY PAIR, STRIP BLOCK, SERIES, SHEET, COVER, FRAME OR CARD.
 - (D) WE WILL NOT PAY FOR A GREATER PROPORTION OF ANY LOSS TO PROPERTY COVERED ON A BLANKET BASIS THAN THE TOTAL AMOUNT OF INSURANCE ON THE PROPERTY BEARS TO THE ACTUAL CASH MARKET VALUE OF THE PROPERTY AT THE TIME OF LOSS.
4. Loss to covered Business Personal Property will be settled as follows:
- (A) WE WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY INDIVIDUAL HAND OR POWER TOOL IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
 - (B) SUBJECT TO THE AMOUNT OF INSURANCE, WE will pay for loss to property described as a pair, set or parts as follows:
 - (1) WE MAY ELECT TO REPAIR OR REPLACE ANY PART TO RESTORE THE PAIR OR SET TO ITS VALUE BEFORE THE LOSS; OR PAY THE DIFFERENCE BETWEEN THE ACTUAL CASH VALUE OF THE PROPERTY BEFORE AND AFTER THE LOSS.
 - (2) IN THE CASE OF A LOSS TO ANY PART OF COVERED PROPERTY, CONSISTING OF SEVERAL PARTS WHEN COMPLETE, WE WILL PAY FOR THE ACTUAL CASH VALUE OF THE PART LOST OR DAMAGED.

POLICY CONDITIONS THAT APPLY

THIS ENDORSEMENT IS SUBJECT TO THE PROVISIONS AND CONDITIONS OF THE POLICY WHICH APPLY TO THE PERSONAL PROPERTY PROTECTION COVERAGE OTHER THAN:

- 1. Limits of Liability;
- 2. Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, Sections C—F;
- 3. Deductible;
- 4. Other Insurance; and
- 5. Any provisions or conditions that are inconsistent with this endorsement.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

LENDER'S LOSS PAYABLE ENDORSEMENT — APC275 (10-78)

1. Loss or damage, if any, under this policy shall be paid, as provided in this Endorsement, to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.
2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however, any acts or omissions of the Lender while exercising active control and management of the property.
3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefor. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.
4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefor exists, this Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with refund of all interest not accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.
5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage

Endorsement attached to this contract of Insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of Insurance is hereby nullified except Contribution Clauses for the compliance with which the Insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the Insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:

Board of Fire Underwriters of the Pacific,
California Bankers' Association,
Committee on Insurance.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Guaranteed Renewal for Claims Endorsement — AP0308

When the Policy Declarations indicates that the Guaranteed Renewal for Claims Endorsement applies, the following provision is added to the General section of the policy:

Guaranteed Renewal for Claims

When this Guaranteed Renewal for Claims provision is part of the policy, any decision by us not to renew or continue the policy will be made without regard to the number of claims reported under the policy. However, nothing in this provision shall limit our right not to renew or continue the policy for any other legally permissible reason(s), including the type(s) of claims reported under the policy.

All other policy terms and conditions apply.

Allstate Property and Casualty Insurance Company

RENEWAL

Homeowners Policy Declarations

Summary

NAMED INSURED(S) David and Pam Gagnon 39010 90th Place Genoa City WI 53128-2402	YOUR ALLSTATE AGENT IS: Michael Koch Ins 612 S Wells, Unit F Lake Geneva WI 53147	CONTACT YOUR AGENT AT: (262) 248-0861
POLICY NUMBER 9 12 697167 10/24	POLICY PERIOD Begins on Oct. 24, 2010 at 12:01 A.M. standard time, with no fixed date of expiration	PREMIUM PERIOD Oct. 24, 2010 to Oct. 24, 2011 at 12:01 A.M. standard time
LOCATION OF PROPERTY INSURED 39010 90th Place, Genoa City, WI 53128-2402		
MORTGAGEE • WELLS FARGO BANK NA 936 ITS SUCCESSORS &/OR ASSIGNS P O Box 100515 Florence SC 29502-0515 Loan # 0254903834		

Total Premium for the Premium Period *(Your bill will be mailed separately)*

Premium for Property Insured	\$565.91
Premium for Scheduled Personal Property Coverage	\$50.00
TOTAL	\$615.91

Your premium reflects the Gold Protection package.

PROP *510004810081053004221003*



Information as of
August 10, 2010

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W1070R00

Allstate Property and Casualty Insurance Company

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

COVERAGE AND APPLICABLE DEDUCTIBLES

(See Policy for Applicable Terms, Conditions and Exclusions)

LIMITS OF LIABILITY

Dwelling Protection - with Building Structure Reimbursement Extended Limits	\$135,174	
• \$500 All Peril Deductible Applies		
Other Structures Protection	\$60,186	
• \$500 All Peril Deductible Applies		
Personal Property Protection - Reimbursement Provision	\$101,381	
• \$500 All Peril Deductible Applies		
Additional Living Expense	Up To 12 Months	
Family Liability Protection	\$300,000	each occurrence
Guest Medical Protection	\$1,000	each person

DISCOUNTS

Your premium reflects the following discounts on applicable coverage(s):

Protective Device (SPP)	5.00 %	Home and Auto	35.00 %
Protective Device	3.00 %	Claim Free	15.00 %

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family
Your dwelling is 2 mile(s) to the fire department

Allstate Property and Casualty Insurance Company

Dulberg Clinton Subpoena000113

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

Scheduled Personal Property Coverage

Your policy includes Scheduled Personal Property Coverage. Please refer to the Scheduled Personal Property endorsement (form APC273) for terms, conditions and exclusions applicable to your Scheduled Personal Property Coverage.

PROPERTY CLASS(ES) AND APPLICABLE DEDUCTIBLES	TOTAL OF INDIVIDUAL ITEM LIMITS PER CLASS (See your APC273 for coverage limits applicable for each scheduled item)
Jewelry	\$5,265

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Homeowners Policy form APC268
- Extended Protection Amendatory End. form APC270
- Scheduled Personal Property End. form APC273
- Wisconsin Homeowners Amendatory End. form APC242-2
- Lender's Loss Payable Endorsement form APC275
- Guaranteed Renewal for Claims form APC308

Important Payment and Coverage Information

The Property Insurance Adjustment condition applies.

Do not pay. Mortgagee has been billed.

IN WITNESS WHEREOF, **Allstate Property and Casualty Insurance Company** has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of **Allstate Property and Casualty Insurance Company**.



Frederick F. Cripe
President



Mary J. McGinn
Secretary

PROP *610004810081053004221004*



Information as of
August 10, 2010

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WIC70RBD

Allstate Property and Casualty Insurance Company Homeowners Policy

Policy:

Issued to:

Effective:



Allstate Property and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company—Home Office: Northbrook, Illinois 60062

APC268

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Agreements We Make With You

We make the following agreements with you:

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

1. **Bodily injury** — means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
 - a) any venereal disease;
 - b) Herpes;
 - c) Acquired Immune Deficiency Syndrome (AIDS);
 - d) AIDS Related Complex (ARC);
 - e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

In addition, **bodily injury** does not include any symptom, effect, condition, disease or illness resulting in any manner from:

- a) lead in any form;
- b) asbestos in any form;
- c) radon in any form; or
- d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the **residence premises**.

2. **Building structure** — means a structure with walls and a roof.

3. **Business** — means:

- a) any full- or part-time activity of any kind engaged in for economic gain including the use of any part of any premises for such purposes. The providing of home day care services to other than an **insured person** or relative of an **insured person** for economic gain is also a **business**.

However, the mutual exchange of home day care services is not considered a **business**;

- b) the rental or holding for rental of property by an **insured person**. Rental of **your residence premises** is not considered a **business** when:
- 1) it is rented occasionally for residential purposes;
 - 2) a portion is rented to roomers or boarders, provided not more than two roomers or boarders reside on the **residence premises** at any one time; or
 - 3) a portion is rented as a private garage.

4. **Dwelling** — means the single family **building structure** identified as the insured property on the Policy Declarations, where **you** reside and which is principally used as a private residence.

5. **Insured person(s)** — means **you** and, if a resident of **your** household:
- a) any relative; and
 - b) any person under the age of 21 in **your** care.

Under **Coverage X — Family Liability Protection** and **Coverage Y — Guest Medical Protection**, **insured person** also means:

- a) any person or organization legally responsible for loss caused by animals or watercraft covered by this policy which are owned by an **insured person**. We do not cover any person or organization using or having custody of animals or watercraft in any **business**, or without permission of the owner;
 - b) with respect to the use of any vehicle covered by this policy, any person while engaged in the employment of an **insured person**.
6. **Insured premises** — means:
- a) the **residence premises**; and
 - b) under **Section II** only:
 - 1) the part of any other premises, other structures and grounds used by **you** as a residence. This includes premises, structures and grounds

you acquire for **your** use as a private residence while this policy is in effect;

- 2) any part of a premises not owned by an **insured person** but where an **insured person** is temporarily living;
- 3) cemetery plots or burial vaults owned by an **insured person**;
- 4) land owned by or rented to an **insured person** where a single family dwelling is being built as that person's residence;
- 5) any premises used by an **insured person** in connection with the **residence premises**;
- 6) any part of a premises occasionally rented to an **insured person** for other than **business** purposes.

7. **Occurrence** — means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage**.

8. **Property damage** — means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.

9. **Remediation** — means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under **Coverage A — Dwelling Protection**, **Coverage B — Other Structures Protection** or **Coverage C — Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

10. **Residence employee** — means an employee of an **insured person** while performing duties arising out of and in the course of employment in connection with the maintenance or use of **your residence premises**. This includes

similar duties performed elsewhere for an **insured person**, not in connection with the **business** of an **insured person**.

11. **Residence premises** — means the **dwelling**, other structures and land located at the address stated on the Policy Declarations.
12. **We, us or our** — means the company named on the Policy Declarations.
13. **You or your** — means the person listed under Named Insured(s) on the Policy Declarations as the Insured and that person's resident spouse.

Insuring Agreement

In reliance on the information **you** have given **us**, **we** agree to provide the coverages indicated on the Policy Declarations. In return, **you** must pay the premium when due and comply with the policy terms and conditions, and inform **us** of any change in title, use or occupancy of the **residence premises**.

Subject to the terms of this policy, the Policy Declarations shows the location of the **residence premises**, applicable coverages, limits of liability and premiums. The policy applies only to losses or **occurrences** that take place during the policy period. The Policy Period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations as the insured and on that person's resident spouse. These persons are defined as **you** or **your**. This means that the responsibilities, acts and omissions of a person defined as **you** or **your** will be binding upon any other person defined as **you** or **your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Conformity To State Statutes

When the policy provisions conflict with the statutes of the state in which the **residence premises** is

located, the provisions are amended to conform to such statutes.

Coverage Changes

When **we** broaden coverage during the premium period without charge, **you** have the new features if **you** have the coverage to which they apply. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information **you** have given **us**. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, is incorrect or incomplete, **we** may adjust **your** coverage and premium accordingly during the premium period.

Any calculation of **your** premium or changes in **your** coverage will be made using the rules, rates and forms on file, if required, for **our** use in **your** state. The rates in effect at the beginning of **your** current premium period will be used to calculate any change in **your** premium.

Policy Transfer

You may not transfer this policy to another person without **our** written consent.

Continued Coverage After Your Death

If **you** die, coverage will continue until the end of the premium period for:

- 1) **your** legal representative while acting as such, but only with respect to the **residence premises** and property covered under this policy on the date of **your** death.
- 2) an **insured person**, and any person having proper temporary custody of **your** property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:

You may cancel this policy by notifying **us** of the future date **you** wish to stop coverage.

Our Right to Cancel:

We may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy

Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason by giving **you** at least 10 days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
- 3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
- 4) there has been a substantial change or increase in hazard in the risk **we** originally accepted.

If the cancellation is for non-payment of premium, **we** will give **you** at least 10 days notice. If the cancellation is for any of the other reasons, **we** will give **you** at least 30 days notice.

Our mailing the notice of cancellation to **you** will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not to Renew or Continue:

We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 30 days before the end of the premium period. **Our** mailing the notice of nonrenewal to **you** will be deemed proof of notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or **occurrence** in which any **insured person** has concealed or misrepresented any material fact or circumstance.

What Law Will Apply

This policy is issued in accordance with the laws of the state in which the **residence premises** is located and covers property or risks principally located in that state. Subject to the following paragraph, the laws of the state in which the **residence premises** is located shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, claims or disputes regarding that covered loss to property, or any other covered **occurrence** may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered **occurrence** happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, lawsuits regarding that covered loss to property, or any other covered **occurrence** may also be brought in the judicial district where that covered loss to property, or any other covered **occurrence** happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there has been full compliance with all policy terms.

Any action against us to which neither the **Action Against Us** provision located in **Section I Conditions** nor the **Action Against Us** provision located in **Section II Conditions** applies must be commenced within one year of the date the cause of action accrues.

If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an **insured person** against us or us against an **insured person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

- a) no arbitrator shall have the authority to award punitive damages or attorney's fees;
- b) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
- c) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Section I— Your Property

Coverage A Dwelling Protection

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.
2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.
3. Wall-to-wall carpeting fastened to **your dwelling**.

Property We Do Not Cover Under Coverage A:

1. Any structure including fences or other property covered under **Coverage B—Other Structures Protection**.
2. Land.
3. Satellite dish antennas and their systems, whether or not attached to **your dwelling**.

Coverage B Other Structures Protection

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.
2. Structures connected to **your dwelling** by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the address of the **residence premises** for use in connection with structures other than **your dwelling**.

4. Wall-to-wall carpeting fastened to **building structures** on the **residence premises** other than **your dwelling**.

Property We Do Not Cover Under Coverage B:

1. Structures used in whole or in part for **business** purposes.
2. Any structure or other property covered under **Coverage A—Dwelling Protection**.
3. Land.
4. Construction materials and supplies at the address of the **residence premises** for use in connection with the **dwelling**.
5. Satellite dish antennas and their systems, whether or not attached to **building structures**.

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection** except as limited or excluded in this policy.

Coverage C Personal Property Protection

Property We Cover Under Coverage C:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located away from the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**.
2. At **your** option, personal property owned by a guest or **residence employee** while the property is in a residence **you** are occupying.

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be

considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. \$50— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. \$200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. \$250— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
 - a) tapes;
 - b) CDs, DVDs and other discs;
 - c) records;
 - d) disks;
 - e) reels;
 - f) cassettes;
 - g) cartridges; or
 - h) programs.
4. \$500— Theft of tools and their accessories.
5. \$1,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value.
6. \$1,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not

include electronic data processing equipment or the recording or storage media used with that equipment.

7. \$1,000 — Trading cards, subject to a maximum amount of \$250 per card.
8. \$1,000 — Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.
9. \$1,000 — Manuscripts, including documents stored on electronic media.
10. \$1,000 — Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.
11. \$1,000 — Trailers not used with watercraft.
12. \$1,000 — Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.
13. \$1,500 — Electronic data processing equipment and the recording or storage media used with that equipment whether or not the equipment is used in a **business**. Recording or storage media will be covered only up to:
 - a) the retail value of the media, if pre-programmed; or
 - b) the retail value of the media in blank or unexposed form, if blank or self-programmed.
14. \$2,000 — Theft of firearms, their related equipment, and accessories.
15. \$2,500 — Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

16. \$2,500 — Theft of goldware, silverware, pewterware and platinumware.

Property We Do Not Cover Under Coverage C:

1. Personal property specifically described and insured by this or any other insurance.
2. Animals.
3. Motorized land vehicles, including, but not limited to, any land vehicle powered or assisted by a motor or engine. **We do not cover** any motorized land vehicle parts, equipment or accessories attached to or located in or upon any motorized land vehicle. **We do cover** motorized land vehicles designed for assisting the disabled or used solely for the service of the **insured premises** and not licensed for use on public roads subject to **Limitations On Certain Personal Property**, item 15.
4. Aircraft and aircraft parts. This does not include model or hobby craft not designed to carry people or cargo.
5. Property of roomers, boarders, or tenants not related to **you**.
6. Property located away from the **residence premises** and rented or held for rental to others.
7. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in **Coverage C — Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.
2. Windstorm or Hail.

We do not cover:

- a) loss to covered property inside a **building structure**, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind

forces rain, snow, sleet, sand or dust through the damaged roof or wall;

- b) loss to watercraft and their trailers, furnishings, equipment and motors unless inside a fully enclosed **building structure**. However, we do cover canoes and rowboats on the **residence premises**.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

We do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations.

8. Vandalism and Malicious Mischief.

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

9. Falling objects.

We do not cover loss to personal property inside a **building structure** unless the falling object first damages the exterior walls or roof of the **building structure**.

10. Weight of ice, snow or sleet which causes damage to personal property in a **building structure**, but only if the **building structure** is damaged due to the weight of ice, snow or sleet.

11. Increase or decrease of artificially generated electrical current to electronics, electrical appliances, fixtures and wiring.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system, an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

We do not cover loss at the **residence premises** under perils 12), 13), and 14) caused by or resulting from freezing while the **building structure** is vacant, unoccupied or under construction unless **you** have used reasonable care to:

- a) maintain heat in the **building structure**; or
b) shut off the water supply and drain the water from the systems and appliances.

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

We do not cover:

- a) theft or attempted theft committed by an **insured person**;
b) theft in or from the **residence premises** while under construction or of materials and supplies for use in construction, until the **dwelling** is completed and occupied;

- c) theft of any property while at any other residence owned, rented to or occupied by an **insured person** unless the **insured person** is temporarily residing there;
 - d) theft of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the **residence premises**;
 - e) theft from that part of the **residence premises** rented by **you** to other than an **insured person**.
16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any **building structure** on the **residence premises**. This does not include damage to the glass.

Additional Protection

1. Additional Living Expense

- a) **We** will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** will be limited to the least of the following:

- 1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or

- 2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
- 3) 12 months.

Additional Living Expense will not exceed the amount indicated on **your** Policy Declarations.

- b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

2. Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money

We will pay for loss:

- a) that an **insured person** is legally required to pay for the unauthorized use of any
 - 1) credit card;
 - 2) debit or automated teller machine card;
 - 3) bank fund transfer card;
 - 4) code;
 - 5) account number;
 - 6) personal identification number; or
 - 7) other means of account accessthat can be used, alone or in conjunction with items 1) through 7) above, to obtain money, goods, services, or any other thing

of value, or that can be used to initiate a transfer of funds.

- b) caused by forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account;
- c) to an **insured person** through acceptance in good faith of counterfeit United States or Canadian paper currency.

Our maximum limit of liability for any one loss is \$1,000, regardless of the number of persons involved. All loss due to forgery or unauthorized use by or involving any one person is considered one loss.

We do not cover:

- a) loss arising from any **business** of an **insured person**;
- b) loss caused by or at the direction of an **insured person** or any other person who has been entrusted with any credit card, debit or automated teller machine card, or bank fund transfer card;
- c) loss arising out of dishonesty of an **insured person**.

When loss is discovered, the **insured person** must give **us** immediate notice. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, the **insured person** must also give immediate notice to the company or bank that issued the card. Failure to comply with the terms and conditions of the card voids this protection.

We will pay only for loss occurring during the policy period, including those losses discovered and reported to **us** within one year after the policy has terminated. **We** have the right to investigate and settle any claim or suit as **we** deem appropriate. Full payment of the amount of insurance for any one loss ends **our** obligation under each claim or suit arising from the loss.

When this coverage applies, **we** will defend any suit brought against an **insured person** for the enforcement of payment that an **insured person** is legally required to make as a result

of the unauthorized use of any credit card, debit or automated teller machine card, or bank fund transfer card issued to or registered in the name of an **insured person**. The defense will be at **our** expense, with counsel of **our** choice.

When this coverage applies, **we** have the option to defend an **insured person** or the **insured person's** bank against a suit for the enforcement of payment legally required to be made as a result of forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account. The defense will be at **our** expense, with counsel of **our** choice.

No deductible applies to this protection.

3. **Debris Removal**

We will pay reasonable expenses **you** incur to remove debris of covered property damaged by a loss **we** cover. If the loss to the covered property and the cost of debris removal are more than the Limit Of Liability shown on the Policy Declarations for the covered property, **we** will pay up to an additional 5% of that limit for debris removal.

4. **Emergency Removal Of Property**

We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from a premises because of danger from a loss **we** cover. Protection is limited to a 30-day period from date of removal. This protection does not increase the limit of liability that applies to the covered property.

5. **Fire Department Charges**

We will pay up to \$500 for service charges made by fire departments called to protect **your** property from a loss **we** cover at the **residence premises**. No deductible applies to this protection.

6. **Temporary Repairs After A Loss**

We will reimburse **you** up to \$5,000 for the reasonable and necessary cost **you** incur for temporary repairs to protect covered property from further imminent covered loss following a loss **we** cover. This coverage does not increase

the limit of liability applying to the property being repaired.

7. **Trees, Shrubs, Plants and Lawns**

We will pay up to 5% of the Limit Of Liability shown on the Policy Declarations under **Coverage A — Dwelling Protection** for loss to trees, shrubs, plants and lawns at the address of the **residence premises**. We will not pay more than \$500 for any one tree, shrub, or plant including expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned by an occupant of the **residence premises**, vandalism or malicious mischief, theft or collapse of a **building structure** or any part of a **building structure**.

We will pay up to \$500 for reasonable expenses you incur for the removal of debris of trees at the address of the **residence premises** for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under **Coverage A — Dwelling Protection** or **Coverage B — Other Structures Protection**.

We do not cover trees, shrubs, plants, or lawns grown for **business** purposes.

This coverage does not increase the limit of liability applying to the damaged property.

8. **Temperature Change**

We will pay for loss to covered personal property in a **building structure** at the **residence premises** resulting from a change in temperature. The change in temperature must result from a covered loss to the **building structure**.

This coverage does not increase the limit of liability applying to the damaged property.

9. **Power Interruption**

We will pay up to \$500 for loss to the contents of freezers and refrigerated units on the

residence premises caused by the interruption of power which occurs off the **residence premises**. If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

10. **Arson Reward**

We will pay up to \$5,000 for information leading to an arson conviction in connection with a fire loss to property covered under **Section I** of this policy. The \$5,000 limit applies regardless of the number of persons providing information.

11. **Collapse**

We will cover at the **residence premises**:

- a) the entire collapse of a covered **building structure**;
- b) the entire collapse of part of a covered **building structure**; and
- c) direct physical loss to covered property caused by a) or b) above.

For coverage to apply, the collapse of a **building structure** specified in a) or b) above must be a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss we cover under **Section I, Coverage C — Personal Property Protection**;
- b) weight of persons, animals, equipment or contents;
- c) weight of rain, snow or ice which collects on a roof;
- d) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

Collapse as referenced herein means the covered **building structure** or part of the covered **building structure** has actually fallen down or fallen into pieces unexpectedly and

instantaneously. It does not include settling, cracking, shrinking, bulging, expansion, sagging, or bowing. Furthermore, collapse does not include or mean substantial structural impairment or imminent collapse.

Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, fuel oil tank, septic tank, cistern or similar system, foundation, retaining wall, bulkhead, pier, wharf or dock is not included, unless the loss is a direct result of the collapse of a **building structure** or part of a **building structure** that is a sudden and accidental direct physical loss caused by one or more of the following:

- a) a loss **we** cover under **Section I, Coverage C—Personal Property Protection**;
- b) weight of persons, animals, equipment or contents; weight of rain, snow or ice which collects on a roof;
- c) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

This coverage does not increase the limit of liability applying to the covered property.

12. Land

If a sudden and accidental direct physical loss results in both a covered loss to the **dwelling**, other than the breakage of glass or safety glazing material, and a loss of land stability, **we** will pay up to \$10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of the **dwelling** sustaining the covered loss.

The **Section I—Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

13. Lock Replacement

When a key to a lock is stolen as part of a covered theft loss, **we** will pay under **Coverage A—Dwelling Protection** the reasonable expenses **you** incur to replace or re-key exterior door locks at the **residence premises** with locks or cylinders of like kind and quality. The limit of liability under this coverage following any one theft loss is \$500.

This coverage does not increase the limit of liability that applies to the covered property.

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C

A. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** consisting of or caused by the following:

1. Freezing of:
 - a) plumbing, fire protective sprinkler systems, heating or air conditioning systems;
 - b) household appliances; or
 - c) swimming pools, hot tubs and spas within the **dwelling**, their filtration and circulation systems; or discharge, leakage or overflow from within a), b) or c) above, caused by freezing, while the **building structure** is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
 - a) maintain heat in the **building structure**; or
 - b) shut off the water supply and drain the system and appliances.
2. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies to fences, pavements, patios, foundations, retaining walls, bulkheads, piers, wharves and docks. This exclusion also applies to swimming pools, hot tubs, spas, their filtration and circulation systems if the swimming pool, hot tub or spa is not located within a heated portion of the **dwelling**.

3. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
 - a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
 - b) from, within or around any plumbing fixtures, including, but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.
4. Collapse, except as specifically provided in **Section I—Additional Protection** under item 11, "Collapse."
5. Theft from **your residence premises** while **your dwelling** is under construction, or of materials and supplies for use in construction, until **your dwelling** is completed and occupied.
6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.
7.
 - a) wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
 - b) mechanical breakdown;
 - c) growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
 - d) rust or other corrosion;
 - e) contamination, including, but not limited to, the presence of toxic, noxious or hazardous gasses, chemicals, liquids, solids or other substances at the **residence premises** or in the air, land or water serving the **residence premises**;
 - f) smog, smoke from the manufacturing of any controlled substance,

agricultural smudging and industrial operations;

- g) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
- h) insects, rodents, birds or domestic animals. **We** do cover the breakage of glass or safety glazing materials caused by birds; or
- i) seizure by government authority.

If any of a) through h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within **your dwelling**, **we** cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, **we** will cover the cost of tearing out and replacing any part of **your dwelling** necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

8. Soil conditions, including, but not limited to, corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.
- B. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** when:
 - 1) there are two or more causes of loss to the covered property; and
 - 2) the predominant cause(s) of loss is (are) excluded under items A.1 through A.8 above.
 - C. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following:

1. Flood, including, but not limited to, surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

2. Water or any other substance that:
a) backs up through sewers or drains; or
b) overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

3. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the **residence premises**.

We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 3 listed above.

4. Earth movement of any type, including, but not limited to, earthquake, volcanic eruption, lava flow, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water.

We do cover sudden and accidental direct physical loss caused by fire, explosion, theft or breakage of glass or safety glazing materials resulting from earth movement.

5. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any **building structure**, other structure or land at the **residence premises**.

We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

6. The failure by any **insured person** to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss **we** cover.

7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
a) may be reasonably expected to result from such acts; or
b) is the intended result of such acts.

This exclusion applies regardless of whether or not the **insured person** is actually charged with, or convicted of, a crime.

9. Weather Conditions that contribute in any way with a cause of loss excluded under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** to produce a loss.

10. Planning, Construction or Maintenance, meaning faulty, inadequate or defective:
a) planning, zoning, development, surveying, siting;
b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
c) materials used in repair, construction, renovation or remodeling; or
d) maintenance

of property whether on or off the **residence premises** by any person or organization.

11. Vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

D. **We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection when:**

- 1) there are two or more causes of loss to the covered property; and
- 2) the predominant cause(s) of loss is (are) excluded under items C.1. through C.11 above.

E. **We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection consisting of or caused by mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.**

This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided in **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

F. **We do not cover loss to the property described in Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection consisting of or caused by the following. These exclusions apply regardless of whether any other cause contributed concurrently or in any sequence to produce the loss:**

1. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss by fire, explosion or smoke.

We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

2. War or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section I Conditions

1. Deductible

We will pay when a covered loss exceeds the applicable deductible shown on the Policy Declarations. We will then pay only the excess amount, unless we have indicated otherwise in this policy.

2. Insurable Interest and Our Liability

In the event of a covered loss, **we** will not pay for more than an **insured person's** insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. What You Must Do After A Loss

In the event of a loss to any property that may be covered by this policy, **you** must:

- a) immediately give **us** or **our** agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, give notice to the company or bank that issued the card.
- b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
- c) separate damaged from undamaged personal property. Give **us** a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.
- e) produce receipts for any increased costs to maintain **your** standard of living while

you reside elsewhere, and records supporting any claim for loss of rental income.

- f) as often as **we** reasonably require:
- 1) show **us** the damaged property.
 - 2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.
 - 3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and
- g) within 60 days after the loss, give **us** a signed, sworn proof of the loss. This statement must include the following information:
- 1) the date, time, location and cause of loss;
 - 2) the interest **insured persons** and others have in the property, including any encumbrances;
 - 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
 - 4) any other insurance that may cover the loss;
 - 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
 - 6) at **our** request, the specifications of any damaged **building structure** or other structure; and
 - 7) evidence supporting any claim under the Credit Card, Debit or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

4. Our Settlement Options

In the event of a covered loss, **we** have the option to:

- a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time; or
- b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 "How We Pay For A Loss."

Within 30 days after **we** receive **your** signed, sworn proof of loss **we** will notify **you** of the option or options **we** intend to exercise.

5. How We Pay For A Loss

Under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection**, payment for covered loss will be by one or more of the following methods:

- a) Special Payment. At **our** option, **we** may make payment for a covered loss before **you** repair, rebuild or replace the damaged, destroyed or stolen property if:
 - 1) the whole amount of loss for property covered under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, without deduction for depreciation, is less than \$2,500 and if the property is not excluded from the Building Structure Reimbursement provision, or;
 - 2) the whole amount of loss for property covered under **Coverage C—Personal Property Protection**, without deduction for depreciation, is less than \$2,500 and if **your** Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.
- b) Actual Cash Value. If **you** do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the Limit Of Liability shown on the Policy Declarations for the coverage that applies to the damaged,

destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c) and paragraph d) below, if applicable, if you repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

- c) Building Structure Reimbursement. Under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a **building structure** damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**, and shall not be payable for any losses excluded in **Section I—Your Property, under Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, section E.**

Building Structure Reimbursement will not exceed the smallest of the following amounts:

- 1) the replacement cost of the part(s) of the **building structure(s)** for equivalent construction for similar use on the same **residence premises**;
- 2) the amount actually and necessarily spent to repair or replace the damaged **building structure(s)** with equivalent construction for similar

use on the same **residence premises**; or

- 3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If you replace the damaged **building structure(s)** at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to **building structures** and the smallest of 1), 2) or 3) above.

Building Structure Reimbursement will not apply to:

- 1) property covered under **Coverage C—Personal Property Protection**;
- 2) property covered under **Coverage B—Other Structures Protection** that is not a **building structure**;
- 3) wall-to-wall carpeting, fences, awnings and outdoor antennas whether or not fastened to a **building structure**; or
- 4) land.

Payment under a), b), or c) above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction,

maintenance, repair, relocation or demolition of **building structures** or other structures.

- d) **Personal Property Reimbursement.** Under **Coverage C—Personal Property Protection**, we will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered personal property or wall-to-wall carpeting within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

- 1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
- 2) the cost of repair or restoration; or
- 3) the Limit Of Liability shown on the Policy Declarations for **Coverage C—Personal Property Protection**, or any special limit of liability described in the policy, regardless of the number of items of personal property involved in the loss.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Personal Property Reimbursement will not apply to:

- 1) property insured under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, except wall-to-wall carpeting;
- 2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
- 3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;

- 4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
- 5) motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

6. **Our Settlement Of Loss**

We will settle any covered loss with **you** unless some other person or entity is named in the policy. **We** will settle within 60 days after the amount of loss is finally determined. This amount may be determined by an agreement between **you** and **us**, an appraisal award or a court judgment.

7. **Appraisal**

If **you** and **we** fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to **you** and to **us** the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other appraisal expenses.

8. Abandoned Property

We are not obligated to accept any property or responsibility for any property abandoned by an insured person.

9. Permission Granted To You

- a) The residence premises may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A building structure under construction is not considered vacant.
- b) You may make alterations, additions or repairs, and you may complete structures under construction.

10. Our Rights To Recover Payment

When we pay for any loss, an insured person's right to recover from anyone else becomes ours up to the amount we have paid. An insured person must protect these rights and help us enforce them. You may waive your rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of the loss.

11. Our Rights To Obtain Salvage

We have the option to take all or any part of the damaged or destroyed covered property upon replacement by us or payment of the agreed or appraised value.

We will notify you of our intent to exercise this option within 30 days after we receive your signed, sworn proof of loss. If no signed, sworn proof of loss is requested by us, we will notify you of our intent to exercise this option within 60 days after the date you report the loss to us.

When we settle any loss caused by theft or disappearance, we have the right to obtain all or part of any property which may be recovered. An insured person must protect this right and inform us of any property recovered. We will inform you of our intent to exercise this right within 10 days of your notice of recovery to us.

12. Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which Section I Conditions applies, unless:

- a) there has been full compliance with all policy terms; and
- b) the action is commenced within one year after the inception of loss or damage.

13. Loss To A Pair Or Set

If there is a covered loss to a pair or set, we may:

- a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
- b) pay the difference between the actual cash value of the pair or set before and after the loss.

14. Glass Replacement

Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

15. No Benefit To Bailee

This insurance will not benefit any person or organization who may be caring for or handling your property for a fee.

16. Other Insurance

If both this insurance and other insurance apply to a loss, we will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

17. Property Insurance Adjustment

When the Policy Declarations indicates that the Property Insurance Adjustment Condition applies, you agree that, at each policy anniversary, we may increase the Limit of Liability shown on the Policy Declarations for Coverage A—Dwelling Protection to reflect one of the following:

- a) the rate of change in the Index identified in the * Important Payment and Coverage

Information" section of the Policy Declarations. The limit of liability for **Coverage A—Dwelling Protection** for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the Index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest \$1000; or

b) the minimum amount of insurance coverage **we** are willing to issue for the succeeding premium period under **Coverage A—Dwelling Protection** for **your dwelling** and other property **we** cover under **Coverage A—Dwelling Protection**.

Any adjustment in the limit of liability for **Coverage A—Dwelling Protection** will result in an adjustment in the limit of liability for **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection** in accordance with **our** manual of Rules and Rates.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by **us** at the time a change in limits is made.

We will not reduce the limit of liability shown on the Policy Declarations without **your** consent. **You** agree that it is **your** responsibility to ensure that each of the limits of liability shown on the Policy Declarations are appropriate for **your** insurance needs. If **you** want to increase or decrease any of the limits of liability shown on the Policy Declarations, **you** must contact **us** to request such a change.

18. Mortgagee

A covered loss will be payable to the Mortgagee(s) named on the Policy Declarations, to the extent of their interest and in the order of precedence. All provisions of **Section I** of this policy apply to these mortgagees.

We will:

- a) protect the mortgagee's interest in a covered **building structure** in the event of an increase in hazard, intentional or criminal acts of, or directed by, an **insured person**, failure by any **insured person** to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and
- b) give the mortgagee at least 10 days notice if **we** cancel this policy.

The mortgagee will:

- a) furnish proof of loss within 60 days after notice of the loss if an **insured person** fails to do so;
- b) pay upon demand any premium due if an **insured person** fails to do so;
- c) notify **us** in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- d) give **us** the mortgagee's right of recovery against any party liable for loss; and
- e) after a loss, and at **our** option, permit **us** to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee or loss payee or other secured party.

19. Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss

In the event of a covered water loss under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection**, **we** will pay up to \$5,000 for mold, fungus, wet rot or dry rot remediation.

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property **we** cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures**

Protection or Coverage C—Personal Property Protection damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain your normal standard of living if mold, fungus, wet rot or dry rot makes your residence premises uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection.**

Section II—Family Liability and Guest Medical Protection

Coverage X Family Liability Protection

Losses We Cover Under Coverage X:

Subject to the terms, conditions and limitations of this policy, we will pay damages which an **insured person** becomes legally obligated to pay because of **bodily injury** or **property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, we will provide a defense with counsel of our choice, even if the allegations are groundless, false or fraudulent. We are not obligated to defend any suit or pay any claim or judgment after we have exhausted our limit of liability.

Coverage Y Guest Medical Protection

Losses We Cover Under Coverage Y:

We will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses,

hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an **occurrence** causing **bodily injury** to which this policy applies, and is covered by this part of the policy.

Each person who sustains **bodily injury** is entitled to this protection when that person is:

1. on the **insured premises** with the permission of an **insured person**; or
2. off the **insured premises**, if the **bodily injury**:
 - a) arises out of a condition on the **insured premises** or immediately adjoining ways;
 - b) is caused by the activities of an **insured person** or a **residence employee**;
 - c) is caused by an animal owned by or in the care of an **insured person**; or
 - d) is sustained by a **residence employee**.

Additional Protection

We will pay, in addition to the limits of liability:

1. Claim Expense

We will pay:

- a) all costs we incur in the settlement of any claim or the defense of any suit against an **insured person**;
- b) interest accruing on damages awarded until such time as we have paid, formally offered, or deposited in court the amount for which we are liable under this policy; interest will be paid only on damages which do not exceed our limits of liability;
- c) premiums on bonds required in any suit we defend; we will not pay bond premiums in an amount that is more than our limit of liability; we have no obligation to apply for or furnish bonds;
- d) up to \$150 per day for loss of wages and salary, when we ask you to attend trials and hearings;
- e) any other reasonable expenses incurred by an **insured person** at our request.

2. Emergency First Aid

We will pay reasonable expenses incurred by an **insured person** for first aid to other persons at the time of an accident involving **bodily injury** covered under this policy.

3. **Damage To Property Of Others**

At your request, we will pay up to \$500 each time an **insured person** causes **property damage** to someone else's property. At our option, we will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for property damage:

- a) to property covered under **Section I** of this policy;
- b) to property intentionally damaged by an **insured person** who has attained the age of 13;
- c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in your household; or
- d) arising out of:
 - 1) past or present **business** activities;
 - 2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
 - 3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

Losses We Do Not Cover Under Coverage X and Coverage Y

A. Losses We Do Not Cover Under Coverage X:

1. **We do not cover bodily injury** to an **insured person** or **property damage** to property owned by an **insured person** whenever any benefit of this coverage would accrue directly or indirectly to an **insured person**.
2. **We do not cover any property damage** consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.
3. **We do not cover any bodily injury or property damage** arising out of any liability statutorily imposed upon any **insured person** in any manner, consisting

of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

4. **We do not cover any liability an insured person** assumes arising out of any contract or agreement.
5. **We do not cover property damage** to property rented to, occupied or used by, or in the care of, an **insured person**. This exclusion does not apply if the **property damage** is caused by fire, explosion or smoke.
6. **We do not cover any liability imposed upon any insured person** by any governmental authority for **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

B. Losses We Do Not Cover Under Coverage Y:

1. **We do not cover bodily injury** to any **insured person** or regular resident of the **insured premises**. However, this exclusion does not apply to a **residence employee**.
2. **We do not cover bodily injury** to any person on the **insured premises** because of a **business** activity or professional service conducted there.

C. Losses We Do Not Cover Under Coverage X and Coverage Y:

Coverage under **Coverage X—Family Liability Protection** will be excluded for **bodily injury** and **property damage** and coverage under **Coverage Y—Guest Medical Protection** will be excluded for **bodily injury** as follows:

1. **We do not cover any bodily injury or property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or

omissions of, any **insured person**. This exclusion applies even if:

- a) such **insured person** lacks the mental capacity to govern his or her conduct;
- b) such **bodily injury or property damage** is of a different kind or degree than intended or reasonably expected; or
- c) such **bodily injury or property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

2. **We do not cover bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured person** under any worker's compensation, non-occupational disability or occupational disease law.

3. **We do not cover bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of aircraft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

4. **We do not cover bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:

- a) a motor vehicle in dead storage or used exclusively on an **insured premises**;
- b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an **insured person** and is

being used away from an **insured premises**;

- c) a motorized wheel chair;
- d) a vehicle used to service an **insured premises** which is not designed for use on public roads and not subject to motor vehicle registration;
- e) a golf cart owned by an **insured person** when used for golfing purposes;
- f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
- g) lawn or garden implements under 40 horsepower;
- h) **bodily injury** to a **residence employee**.

5. **We do not cover bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of watercraft away from an **insured premises** if the watercraft:

- a) has inboard or inboard-outboard motor power of more than 50 horsepower;
- b) is a sailing vessel 26 feet or more in length;
- c) is powered by one or more outboard motors with more than 25 total horsepower;
- d) is designated as an airboat, air cushion, or similar type of watercraft; or
- e) is a personal watercraft, meaning a craft propelled by a water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.

This exclusion does not apply to **bodily injury** to a **residence employee**.

6. **We do not cover bodily injury or property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of hovercrafts. This exclusion does not

apply to **bodily injury** to a **residence employee**.

7. We do not cover **bodily injury** or **property damage** arising out of:
- the negligent supervision by any **insured person** of any person; or
 - any liability statutorily imposed on any **insured person**

arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any aircraft, watercraft, hovercraft, motorized land vehicle or trailer which is not covered under **Section II** of this policy.

8. We do not cover any **bodily injury** which results in any manner from the discharge, dispersal, release or escape of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

We do cover **bodily injury** which results from such discharge if the discharge is sudden and accidental.

9. We do not cover **bodily injury** or **property damage** arising out of the rendering of, or failure to render, professional services by an **insured person**.

10. We do not cover **bodily injury** or **property damage** arising out of the past or present **business** activities of an **insured person**.

We do cover the occasional or part-time **business** activities of an **insured person** who is a student under 21 years of age who is self-employed and has no employees.

11. We do not cover **bodily injury** or **property damage** arising out of any premises, other than an **insured premises**, owned, rented or controlled by an **insured person**. This

exclusion does not apply to **bodily injury** to a **residence employee**.

12. We do not cover **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

13. We do not cover **bodily injury** or **property damage** caused by war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section II Conditions

1. What You Must Do After An Accidental Loss

In the event of **bodily injury** or **property damage**, you must do the following:

- Promptly notify us or our agent stating:
 - your name and policy number;
 - the date, the place and the circumstances of the loss;
 - the name and address of anyone who might have a claim against an **insured person**;
 - the names and addresses of any witnesses.
- Promptly send us any legal papers relating to the accident.
- At our request, an **insured person** will:
 - cooperate with us and assist us in any matter concerning a claim or suit;
 - help us enforce any right of recovery against any person or organization who may be liable to an **insured person**;
 - attend any hearing or trial.
- Under the **Damage To Property Of Others** protection, give us a sworn statement of the loss. This must be made within 60 days after the date of loss. Also, an **insured person** must be prepared to show us any damaged property under that person's control.

Any **insured person** will not voluntarily pay any money, assume any obligations or incur any expense, other than for first aid to others

at the time of the loss as provided for in this policy.

2. What An Injured Person Must Do —Coverage Y—Guest Medical Protection

If someone is injured, that person, or someone acting for that person, must do the following:

- a) Promptly give **us** written proof of the loss. If **we** request, this must be done under oath.
- b) Give **us** written authorization to obtain copies of all medical records and reports.
- c) Permit doctors **we** select to examine the injured person as often as **we** may reasonably require.

3. Our Payment Of Loss —Coverage Y—Guest Medical Protection

We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by **us** or an **insured person**.

4. Our Limits Of Liability

Regardless of the number of **insured persons**, injured persons, claims, claimants or policies involved, **our** total liability under **Coverage X—Family Liability Protection** for damages resulting from one **occurrence** will not exceed the Limit Of Liability shown on the Policy Declarations. All **bodily injury** and **property damage** resulting from continuous or repeated exposure to the same general conditions is considered the result of one **occurrence**. **Our** total liability under **Coverage Y—Guest Medical Protection** for all medical expenses payable for **bodily injury**, to any one person, shall not exceed the "each person" Limit Of Liability shown on the Policy Declarations.

5. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an **insured person**.

6. Our Rights to Recover Payment —Coverage X—Family Liability Protection

When **we** pay any loss, an **insured person's** right to recover from anyone else becomes

ours up to the amount **we** have paid. An **insured person** must protect these rights and help **us** enforce them.

7. Action Against Us

- a) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, unless there has been full compliance with all policy terms.
- b) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage X—Family Liability Protection**, unless the obligation of an **insured person** to pay has been finally determined either by judgment against the **insured person** after actual trial, or by written agreement of the **insured person**, injured person and **us**, and the action against **us** is commenced within one year of such judgment or agreement.
- c) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage Y—Guest Medical Protection**, unless such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred.
- d) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Section II—Additional Protection**, unless such action is commenced within one year after the date the claim expenses or emergency first aid expenses for which coverage is sought were actually incurred, or within one year after the date of loss to the property if coverage is being sought under the **Damage to Property of Others** provision.
- e) No one shall have any right to make **us** a party to an action to determine the liability of an **insured person**.

8. Other Insurance — Coverage X — Family Liability Protection

This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III — Optional Protection

Optional Coverages You May Buy

The following Optional Coverages may supplement coverages found in **Section I** or **Section II** and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. Coverage BC

Building Codes

We will pay up to 10% of the amount of insurance on the Policy Declarations under **Coverage A — Dwelling Protection** to comply with local building codes after a covered loss to the **dwelling** or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of the **dwelling**.

2. Coverage BP

Increased Coverage On Business Property

The limitation on **business** property located on the **residence premises**, under **Coverage C — Personal Property Protection**, is increased to the amount shown on the Policy Declarations. This increased coverage includes property held as samples or for sale or delivery after sale, while the property is on the **residence premises**.

3. Coverage DP

Increased Coverage On Electronic Data Processing Equipment

The limitation on electronic data processing equipment under **Coverage C — Personal Property Protection**, and the recording or storage media used with that equipment, is

increased to the amount shown on the Policy Declarations.

4. Coverage F

Fire Department Charges

The \$500 limit applying to the fire department service charges under **Additional Protection** is increased to the amount shown on the Policy Declarations.

5. Coverage G

Loss Assessments

If your **residence premises** includes a **building structure** which is constructed in common with one or more similar buildings, and you are a member of, and subject to the rules of, an association governing the areas held in common by all building owners as members of the association, the **insured premises** means the **building structure** occupied exclusively by your household as a private residence, including the grounds, related structures and private approaches to them.

We will pay your share of any special assessments charged against all building owners by the association up to the Limit Of Liability shown on the Policy Declarations, when the assessment is made as a result of:

- a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss we cover under **Section I** of this policy; or
- b) **bodily injury** or **property damage** covered under **Section II** of this policy.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

We will pay only when the assessment levied against the **insured person**, as a result of any one loss, for **bodily injury** or **property damage** exceeds \$250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to **Section I** of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to **Sections I and II** of this policy and the **Section I and II Conditions**, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

6. Coverage J

Extended Coverage On Jewelry, Watches and Furs

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to the following property, subject to the provisions in this coverage:

- a) jewelry, watches, gems, precious and semi-precious stones, gold, platinum; and
- b) furs, including any item containing fur which represents its principal value.

The total amount of coverage and per item limit is shown on the Policy Declarations. This amount is not in addition to the amount of insurance applying to **Coverage C—Personal Property Protection**. However, in no event will coverage be less than would have applied in the absence of **Coverage J**.

We do not cover loss caused by or consisting of:

- a) intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
 - 1) may be reasonably expected to result from such acts; or
 - 2) is the intended result of such acts.
- b) wear and tear, gradual deterioration, inherent vice, insects or vermin;
- c) nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.
- d) war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

- e) failure by any **insured person** to take all reasonable steps to preserve property during and after a loss or when the property is endangered by a cause of loss we cover.

Any deductible shown on the Policy Declarations applicable to **Coverage C—Personal Property Protection**, also applies to a loss under this coverage.

7. Coverage K

Incidental Office, Private School Or Studio

- a) The limits applying to property used or intended for use in a **business** under **Coverage C—Personal Property Protection** do not apply to equipment, supplies and furnishings used in a described office, private school or studio at **your residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

The **Coverage K** limits are shown on the Policy Declarations. The first limit applies to property on the **residence premises**. The second limit applies to property while away from the **residence premises**. These limits are not in addition to **Coverage C—Personal Property Protection, Limitations On Certain Personal Property** on property used or intended for use in a **business**. The increased coverage does not include property held for sample, sale or delivery after sale.

- b) **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection** are extended to cover a described office, private school or studio occupied by an **insured person**. The occupancy of the described property shall not be considered a **business**.

We do not cover **bodily injury** to:

- a) any employee other than a **residence employee**; or

- b) any person arising out of corporal punishment administered by or at the direction of an **insured person**.

8. **Coverage M**

Increased Coverage On Money

The limitation on money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

9. **Coverage P**

Business Pursuits

Coverage X—Family Liability Protection and **Coverage Y—Guest Medical Protection** are extended to cover specified **business** pursuits of an **insured person**.

We do not cover:

- a) **bodily injury or property damage** arising out of the **business** pursuits of an **insured person** when the **business** is owned or financially controlled by the **insured person**. This also means a partnership or joint venture of which an **insured person** is a partner or member;
- b) **bodily injury or property damage** arising out of the rendering of or failure to render a professional service of any nature, other than teaching;
- c) **bodily injury** to a fellow employee of an **insured person** arising out of and in the course of employment;
- d) **bodily injury or property damage** when an **insured person** is a member of a teaching staff or faculty of any school or college and the **bodily injury or property damage** arises out of the maintenance or use of saddle animals, vehicles used with

saddle animals, motorized land vehicles, hovercrafts, aircraft or watercraft when owned, hired or operated by an **insured person** or used for the purpose of instruction; or

- e) **bodily injury** to any person arising out of corporal punishment administered by or at the direction of an **insured person** when an **insured person** is a member of the teaching staff or faculty of any school of instruction.

10. **Coverage S**

Increased Coverage On Securities

The \$1,000 limitation on accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property, covered under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations.

11. **Coverage SD**

Satellite Dish Antennas

Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to satellite dish antennas and their systems on **your residence premises**, subject to the provisions of **Coverage C—Personal Property Protection**.

The amount of coverage is shown on the Policy Declarations.

12. **Coverage ST**

Increased Coverage On Theft Of Silverware

The limitation on theft of goldware, silverware, pewterware and platinumware under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Wisconsin Homeowners

Amendatory Endorsement — APC242-2

This endorsement amends your Homeowners Policy and is in addition to all other amendatory endorsements which apply to this policy.

I. In the **General** section, the following changes are made:

A. The **Cancellation** provision is replaced by the following:

Cancellation

Your Right to Cancel:

You may cancel this policy by returning it to **us** or by notifying **us** in writing of the future date **you** wish to stop coverage.

Our Right to Cancel:

Allstate may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason.

When this policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

- 1) non-payment of premium;
- 2) the policy was obtained by misrepresentation, fraud or concealment of material facts; or
- 3) there has been substantial change or increase in hazard in the risk **we** originally accepted.

If **we** cancel this policy, **we** will give **you** at least 10 days notice before the cancellation takes effect. **Our** mailing the notice of cancellation to **you** will be deemed to be proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

B. **Our Right Not to Renew or Continue** is replaced by the following:

Our Right Not to Renew or Continue:

We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 60 days before the end of the premium period. **Our** mailing notice of non-renewal to **you** will be deemed proof of notice.

Any unearned premium amounts under \$2.00 will be refunded only upon **your** request.

C. **Misrepresentation, Fraud or Concealment** is replaced by the following:

If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any **insured person** has concealed or misrepresented any material fact or circumstance and

1. **we** rely on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty is either material or made with intent to deceive; or
2. the fact misrepresented or falsely warranted contributes to the loss.

D. **Action Against Us** is replaced by the following:

No one may bring an action against us unless there has been full compliance with all policy terms.

E. The following provision is added:

Conditional Reinstatement

If **we** mail a cancellation notice because **you** did not pay the required premium when due and **you** then tender payment by check, draft, or other remittance which is not honored upon presentation, **your** policy will terminate on the date and time shown on the cancellation notice and any notice **we** issue which waives the cancellation or reinstates coverage is void. This means that **We** will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

II. In **Section I – Your Property**, the following changes are made:

A. Under **Losses We Cover Under Coverage C**, item 8 is replaced with the following:

8. **Vandalism or Malicious Mischief.**

We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 60 days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

B. In **Additional Protection – Additional Living Expense** is replaced by the following:

Additional Living Expense

We will pay the reasonable and necessary increase in living expenses and the lost fair rental income for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses or **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions – Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

We will pay **your** lost fair rental income resulting from a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection**, less charges and expenses which do not continue, when a loss we cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** makes the part of the **residence premises you** rent to others, or hold for rental, uninhabitable. We will pay for lost fair rental income for the shortest time required to repair or replace the part rented or held for rental but not to exceed 12 months. However, payments for **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

- C. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section A, item 6, is replaced by the following:

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 60 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

- D. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section C, item 5, the following exception is added:

This exclusion does not apply when the **residence premises** is partially destroyed but ordered destroyed by fire ordinance or similar law.

- E. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under section C, item 8, is replaced by the following:

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
- a) may be reasonably expected to result from such acts; or
 - b) is the intended result of such acts.

This exclusion applies regardless of whether or not the **insured person** is actually charged with or convicted of a crime.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

- F. In **Section I Conditions**, under **How We Pay For A Loss** provision, the following is added:

We agree that in the event of a total loss we will pay the limit of liability shown on the Policy Declarations for **Coverage A—Dwelling Protection**. This limit represents the total value of the **dwelling** on the **residence premises**, including structures attached to the **dwelling**.

G. In **Section I Conditions**, the following changes are made:

1. The **Our Settlement of Loss** provision is replaced by the following:

Our Settlement of Loss

We will settle any covered loss with **you**. **We** will settle with **you** unless another payee is named in the policy. **We** will settle within 30 days after the amount of loss is finally determined. This amount may be determined by an agreement among **you**, any other payee or entity named in the policy and **us**, an appraisal award or a court judgment.

2. In **Action Against Us**, paragraph b. is deleted.

III. In **Section II – Family Liability and Guest Medical Protection**, the following changes are made:

- A. In **Losses We Do Not Cover Under Coverage X**, the second paragraph is amended as follows:

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** are not obligated to pay any claim or judgment after **we** have exhausted **our** limit of liability.

- B. In **Losses We Do Not Cover Under Coverage X and Coverage Y**, Section C, **Losses We Do Not Cover Under Coverage X and Coverage Y**, the following is added to item 1.:

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

- C. In **Section II Conditions**, subsection (a) is replaced by the following to the **What You Must Do After An Accidental Loss** provision:

a) within 20 days following the loss, notify **us** or our agent in writing, stating:

- 1) **your** name and policy number;
- 2) the date, the place and the circumstance of the loss;
- 3) the name and address of anyone who might have a claim against an **insured person**;
- 4) the names and addresses of any witnesses.

Failure to give such notice within 20 days will not invalidate any claim made by an **insured person** if:

- 1) that person can show it was not reasonably possible to notify **us** or **our** agent within the specified time; or
- 2) that such notice was given as soon as reasonably possible.

- D. The **Action Against Us** provision is replaced by the following:

No one may bring an action against **us** unless there has been full compliance with all policy terms.

- IV. In **Section II — Optional Protection**, the **Coverage J — Extended Coverage on Jewelry, Watches and Furs**, the following provision is added to the third paragraph that begins, "We do not cover loss caused by or consisting of"

We do not cover loss caused by or consisting of:

- a) intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
 - 1) may be reasonably expected to result from such acts; or
 - 2) is the intended result of such acts.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Extended Protection Amendatory Endorsement — APC270

I. In Section I—Your Property, Coverage C—Personal Property Protection is revised as follows:

A. In Property We Cover Under Coverage C, item 1. is replaced by the following:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located at a residence other than the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**. This limitation does not apply to personal property in a newly acquired principal residence for the 30 days immediately after **you** begin to move property there, personal property in use at a temporary residence when a direct physical loss **we** cover makes **your residence premises** uninhabitable, or to personal property in student dormitory, fraternity or sorority housing.

B. The **Limitations On Certain Personal Property** provision is replaced by the following:

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. \$200— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. \$200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. \$500— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
 - a) tapes;
 - b) CDs, DVDs and other discs;
 - c) records;
 - d) disks;
 - e) reels;
 - f) cassettes;
 - g) cartridges; or
 - h) programs.

4. \$1,000— Trading cards, subject to a maximum amount of \$250 per card.
5. \$1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.
6. \$1,000— Manuscripts, including documents stored on electronic media.
7. \$1,000— Trailers not used with watercraft.
8. \$2,000 - Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.
9. \$2,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
10. \$2,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.
11. \$10,000— Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.
12. \$3,000— Theft of firearms, their related equipment, and accessories.
13. \$5,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value, subject to a maximum amount of \$1,000 per item.
14. \$2,500— Theft of goldware, silverware, pewterware and platinumware.
15. \$10,000— Theft of tools and their accessories.

II. In Section I—Your Property, **Additional Protection** is revised as follows:

A. Item 1. **Additional Living Expense** is replaced by the following:

1. **Additional Living Expense**

- a) We will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection or Coverage C—Personal Property Protection** will be limited to the least of the following:

- 1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or
 - 2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
 - 3) 12 months.
- b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

B. Item 9. **Power Interruption** is replaced by the following:

9. **Power Interruption**

We will pay for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises**. If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

III. **Building Structure Reimbursement Extended Limits**

In **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement **we** will replace item 3) if, at the time of the loss, **you** have met the following conditions:

- A. Insure **your dwelling**, attached structures and detached **building structures** to 100% of replacement cost as determined by **our** estimate completed and based on the accuracy of information **you** furnished;
- B. Have accepted the Property Insurance Adjustment Condition, agree to accept each annual adjustment in the **Coverage A—Dwelling Protection** limit of liability, and pay any additional premium charged; and
- C. Notify **us** within 60 days of the start of any modifications that increase the aggregate value of **your dwelling**, attached structures and detached **building structures** at the **residence premises** by \$5,000 or more, and pay any resulting additional premium due for the increase in value.

If, at the time of a covered loss, **you** meet all of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) is replaced with:

- 3) 120% of the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If, at the time of a covered loss, **you** fail to meet any of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) remains:

- 3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

IV. In **Section II—Family Liability and Guest Medical Protection**, under **Additional Protection**, item 3 is replaced by the following:

3. **Damage To Property Of Others**

At **your** request, **we** will pay up to \$1,000 each time an **insured person** causes **property damage** to someone else's property. At **our** option, **we** will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for **property damage**:

- a) to property covered under **Section I** of this policy;
- b) to property intentionally damaged by an **insured person** who has attained the age of 13;
- c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in **your** household; or
- d) arising out of:
 - 1) past or present **business** activities;
 - 2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
 - 3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Scheduled Personal Property Endorsement — APC273

WHERE COVERAGE APPLIES

WE will cover the described property anywhere in the world. HOWEVER, COVERAGE ON FINE ARTS, FIREARMS AND BUSINESS PERSONAL PROPERTY IS LIMITED TO WITHIN THE UNITED STATES OF AMERICA AND CANADA.

SPECIAL PROVISIONS AND CONDITIONS:

1. Musical Instruments: **YOU** agree that none of the musical instruments covered will be played for remuneration unless this is indicated in the schedule and an additional premium paid.
2. Silverware: This classification includes silverware, silver-platedware, goldware, gold-platedware and pewterware. IT DOES NOT INCLUDE PENS, PENCILS, FLASKS, SMOKING IMPLEMENTS OR ACCESSORIES, OR ITEMS OF JEWELRY.
3. Fine Arts: **YOU** agree that covered fine arts will be packed and unpacked by competent packers.
4. Golfer's Equipment: Coverage on golfer's equipment owned by an **INSURED PERSON** includes golf clubs, golf clothing and equipment, BUT DOES NOT INCLUDE JEWELRY, WATCHES AND EQUIPMENT FOR SALE. Coverage also applies to **YOUR** other clothing while contained in any locker at the premises where **YOU** are playing golf. GOLF BALLS ARE COVERED ONLY FOR LOSS BY FIRE OR BY BURGLARY PROVIDED, IN THE CASE OF BURGLARY, THERE ARE VISIBLE MARKS OF FORCIBLE ENTRY INTO THE BUILDING, ROOM OR LOCKER CONTAINING THE GOLF BALLS.
5. Stamp and Coin Collections: Coverage on postage stamps includes due, envelope, official, revenue, match and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property an **INSURED PERSON** owns or controls. This includes the books, pages and mountings.

Coverage on rare and current coins includes medals, paper money, bank notes, tokens or money and other numismatic property an **INSURED PERSON** owns or controls. This includes albums, containers, frames, cards, and display cabinets used with the coin collections.
6. Business Personal Property: This classification includes hand tools and portable power tools owned by an **INSURED PERSON** and used in that person's **BUSINESS**. WE WILL NOT COVER THE FOLLOWING PROPERTY:
 - (A) SPARE PARTS, UNLESS ATTACHED TO THE COVERED PROPERTY OR SPECIFICALLY DESCRIBED IN THIS ENDORSEMENT;
 - (B) ELECTRICAL APPLIANCES OR DEVICES, INCLUDING WIRING, DAMAGED DUE TO ELECTRICAL INJURY DISTURBANCES, CAUSED BY ARTIFICIALLY GENERATED ELECTRICAL CURRENTS, UNLESS FIRE FOLLOWS AND THEN ONLY LOSS OR DAMAGE CAUSED BY FIRE IS COVERED.
7. DOUBLE RECOVERY: WE WILL NOT PAY FOR ANY LOSS IF AN **INSURED PERSON** HAS COLLECTED FOR THE SAME LOSS FROM OTHERS.

NEWLY ACQUIRED PROPERTY

THIS PROVISION APPLIES ONLY TO THE JEWELRY, FURS, CAMERAS AND MUSICAL INSTRUMENTS CLASSES WHEN SIMILAR PROPERTY IS ALREADY DESCRIBED AND SCHEDULED IN THIS ENDORSEMENT.

WE WILL ONLY COVER NEWLY ACQUIRED PROPERTY OF AN **INSURED PERSON** FOR ITS ACTUAL VALUE PROVIDED **YOU** REPORT THE NEWLY ACQUIRED PROPERTY TO **US** WITHIN 30 DAYS OF ACQUISITION AND PAY THE ADDITIONAL PREMIUM FROM THE DATE ACQUIRED.

COVERAGE FOR EACH CLASS OF PROPERTY TO WHICH THIS PROVISION APPLIES WILL NOT EXCEED 25% OF THE AMOUNT OF INSURANCE FOR THAT CLASS OF PROPERTY OR \$10,000, WHICHEVER IS LESS.

EXCLUSIONS — LOSSES WE DO NOT COVER

1. **WE** WILL NOT COVER LOSS OR DAMAGE TO THE DESCRIBED PROPERTY CAUSED BY WEAR AND TEAR, GRADUAL DETERIORATION, INSECTS, VERMIN OR INHERENT VICE.
2. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY NUCLEAR ACTION, MEANING NUCLEAR REACTION, DISCHARGE OR RADIATION OR RADIOACTIVITY, OR ANY CONSEQUENCE OF ANY OF THESE. LOSS BY NUCLEAR ACTION IS NOT CONSIDERED LOSS BY FIRE, EXPLOSION OR SMOKE. DIRECT LOSS BY FIRE RESULTING FROM NUCLEAR ACTION IS COVERED.
3. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY WAR OR WARLIKE ACTS, INCLUDING INSURRECTION, REBELLION, OR REVOLUTION.
4. If Fine Arts are covered, **WE** WILL NOT COVER:
 - (A) LOSS OR DAMAGE CAUSED BY ANY REPAIRING, RESTORATION OR RETOUCHING PROCESS;
 - (B) BREAKAGE OF ART GLASS WINDOWS, STATUARY, MARBLES, GLASSWARE, BRIC-A-BRAC, PORCELAINS AND SIMILAR FRAGILE ITEMS, UNLESS CAUSED BY FIRE, LIGHTNING, WINDSTORM, AIRCRAFT, THEFT OR ATTEMPTED THEFT, EARTHQUAKE, FLOOD, EXPLOSION, MALICIOUS DAMAGE, OR COLLISION, DERAILMENT OR OVERTURN OF CONVEYANCE, OR UNLESS COVERAGE FOR BREAKAGE IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
 - (C) PROPERTY ON EXHIBITION AT FAIR GROUNDS OR ON ANY NATIONAL OR INTERNATIONAL EXPOSITION PREMISES, UNLESS OTHERWISE INDICATED IN THIS ENDORSEMENT.
5. If Sports Equipment, other than golf equipment, is covered, **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY:
 - (A) ANY REFINISHING, RENOVATING OR REPAIRING PROCESS; DAMPNESS OR EXTREMES OF TEMPERATURE; OR, RUST FOULING OR EXPLOSION OF FIREARMS;
 - (B) BREAKAGE, MARRING, SCRATCHING, TEARING OR DENTING UNLESS CAUSED BY FIRE, THEFT OR ACCIDENTS TO CONVEYANCES; OR
 - (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES OR PERSONS TO WHOM THE COVERED PROPERTY MAY BE ENTRUSTED OR RENTED.
6. If Stamp or Coin Collections are covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
 - (A) FADING, CREASING, DENTING, SCRATCHING, TEARING, THINNING, TRANSFER OF COLORS, INHERENT DEFECT, DAMPNESS, EXTREMES OF TEMPERATURE, GRADUAL DEPRECIATION, OR DAMAGE SUSTAINED FROM HANDLING OR WHILE BEING ACTUALLY WORKED ON;
 - (B) MYSTERIOUS DISAPPEARANCE OF INDIVIDUAL STAMPS, COINS OR OTHER INDIVIDUAL ITEMS **WE** COVER UNLESS SPECIFICALLY DESCRIBED WITH A DEFINITE AMOUNT SET OPPOSITE THEIR DESCRIPTION, OR IF

NOT SPECIFICALLY DESCRIBED, UNLESS MOUNTED IN A VOLUME, AND THE PAGE TO WHICH THEY ARE ATTACHED IS ALSO LOST;

- (C) THEFT FROM ANY UNATTENDED AUTOMOBILE EXCEPT WHILE BEING SHIPPED BY REGISTERED MAIL UNLESS COVERAGE FOR EXTENDED THEFT IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
- (D) LOSS TO PROPERTY IN THE CUSTODY OF TRANSPORTATION COMPANIES; NOR SHIPMENTS BY MAIL UNLESS BY REGISTERED MAIL; OR
- (E) LOSS TO ANY PROPERTY DESCRIBED IN THE SCHEDULE WHICH IS NOT AN ACTUAL PART OF A STAMP, COIN OR NUMISMATIC COLLECTION.

7. If Business Personal Property is covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:

- (A) FREEZING, CONTAMINATION, DAMPNESS OF ATMOSPHERE, EXTREMES OF TEMPERATURES, CORROSION OR RUST;
- (B) BREAKAGE, MARRING, SCRATCHING, CHIPPING OR DENTING, UNLESS CAUSED BY FIRE, EXPLOSION, THEFT, WINDSTORM, EARTHQUAKE, FLOOD, VANDALISM, MALICIOUS MISCHIEF, OR COLLISION, DERAILMENT OR OVERTURNING OF THE TRANSPORTING CONVEYANCE;
- (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES, WHETHER IN THE SCOPE OF EMPLOYMENT OR NOT, OR ANY PERSON TO WHOM THE PROPERTY IS ENTRUSTED (EXCEPT CARRIERS FOR HIRE);
- (D) MECHANICAL OR STRUCTURAL FAILURE OF TOOLS, OR BREAKDOWN, DEFECT OR FAILURE OF MACHINES OR POWER TOOLS;
- (E) THEFT OF TOOLS FROM AN UNATTENDED VEHICLE UNLESS THE VEHICLE IS SECURELY CLOSED AND LOCKED AND EVIDENCE OF FORCIBLE ENTRY IS VISIBLE OR THE ENTIRE VEHICLE IS STOLEN OR UNLESS THE INSURED PROPERTY IS IN THE CUSTODY OF A COMMON CARRIER;
- (F) ANY PROCESS OR SERVICE RESULTING IN SHRINKAGE, CHANGE IN COLOR, FINISH OR OTHER CHANGE IN THE DESCRIBED PROPERTY; OR
- (G) DISCLOSURE OF ANY INVENTORY SHORTAGE.

HOW WE SETTLE A LOSS

1. UNLESS OTHERWISE PROVIDED IN THIS ENDORSEMENT:

- (A) THE VALUE OF THE COVERED PROPERTY WILL BE DETERMINED AT THE TIME OF LOSS; AND
- (B) LOSS OR DAMAGE TO COVERED PERSONAL PROPERTY WILL BE SETTLED ON AN ACTUAL CASH VALUE BASIS. THIS MEANS THERE MAY BE A DEDUCTION FOR DEPRECIATION. PAYMENT WILL NOT EXCEED THE AMOUNT NECESSARY TO REPAIR OR REPLACE THE DAMAGED ITEM(S) WITH PROPERTY OF LIKE KIND AND QUALITY, OR THE AMOUNT OF INSURANCE, WHICHEVER IS LESS.

2. Loss to covered Fine Arts will be settled as follows:

- (A) **WE** WILL PAY THE AMOUNT OF INSURANCE SHOWN FOR EACH DESCRIBED ITEM AND **WE** AGREE IT IS THE VALUE OF THE ITEM FOR THE PURPOSE OF LOSS SETTLEMENT.
- (B) IF THERE IS A LOSS TO A PAIR OR SET, **WE** AGREE TO PAY THE AMOUNT OF INSURANCE FOR THE DESCRIBED PAIR OR SET. **YOU** AGREE TO GIVE **US** THE REMAINING ITEM OR ITEMS.

3. Loss to covered Stamps and Coins will be settled as follows:

- (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY ONE STAMP, COIN OR OTHER INDIVIDUAL ITEM IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
- (B) Loss to covered property described as pairs, strips, blocks, series, sheets, covers, frames or cards will be settled as follows:
 - (1) IF THERE IS A TOTAL LOSS, **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE THE ITEM INVOLVED.

- (2) IF THERE IS A PARTIAL LOSS, **WE** WILL PAY THE ACTUAL CASH MARKET VALUE OF THE WHOLE SET, LESS THE CASH MARKET VALUE OF THE REMAINDER AT THE TIME OF LOSS, BUT NOT MORE THAN THE AMOUNT OF INSURANCE SET OPPOSITE THE PROPERTY INVOLVED. HOWEVER, IF THE COVERED PROPERTY INVOLVED IS INSURED FOR LESS THAN THE CASH MARKET VALUE, **WE** WILL ONLY PAY THE PROPORTION THAT THE AMOUNT OF INSURANCE BEARS TO THE CASH MARKET VALUE.
 - (C) When coins or stamps are covered on a blanket basis, **WE** WILL PAY THE CASH MARKET VALUE AT THE TIME OF LOSS NOT EXCEEDING \$1,000 ON ANY UNSCHEDULED NUMISMATIC PROPERTY, AND NOT MORE THAN \$250 FOR ONE STAMP, COIN OR INDIVIDUAL ITEM, OR ANY PAIR, STRIP BLOCK, SERIES, SHEET, COVER, FRAME OR CARD.
 - (D) **WE** WILL NOT PAY FOR A GREATER PROPORTION OF ANY LOSS TO PROPERTY COVERED ON A BLANKET BASIS THAN THE TOTAL AMOUNT OF INSURANCE ON THE PROPERTY BEARS TO THE ACTUAL CASH MARKET VALUE OF THE PROPERTY AT THE TIME OF LOSS.
4. Loss to covered Business Personal Property will be settled as follows:
- (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY INDIVIDUAL HAND OR POWER TOOL IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
 - (B) SUBJECT TO THE AMOUNT OF INSURANCE, **WE** will pay for loss to property described as a pair, set or parts as follows:
 - (1) **WE** MAY ELECT TO REPAIR OR REPLACE ANY PART TO RESTORE THE PAIR OR SET TO ITS VALUE BEFORE THE LOSS; OR PAY THE DIFFERENCE BETWEEN THE ACTUAL CASH VALUE OF THE PROPERTY BEFORE AND AFTER THE LOSS.
 - (2) IN THE CASE OF A LOSS TO ANY PART OF COVERED PROPERTY, CONSISTING OF SEVERAL PARTS WHEN COMPLETE, **WE** WILL PAY FOR THE ACTUAL CASH VALUE OF THE PART LOST OR DAMAGED.

POLICY CONDITIONS THAT APPLY

THIS ENDORSEMENT IS SUBJECT TO THE PROVISIONS AND CONDITIONS OF THE POLICY WHICH APPLY TO THE PERSONAL PROPERTY PROTECTION COVERAGE OTHER THAN:

- 1. Limits of Liability;
- 2. Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, Sections C—F;
- 3. Deductible;
- 4. Other Insurance; and
- 5. Any provisions or conditions that are inconsistent with this endorsement.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

LENDER'S LOSS PAYABLE ENDORSEMENT — APC275 (10-78)

1. Loss or damage, if any, under this policy shall be paid, as provided in this Endorsement, to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.
2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however, any acts or omissions of the Lender while exercising active control and management of the property.
3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefor. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.
4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefor exists, this Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with refund of all interest not accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.
5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage

Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:

Board of Fire Underwriters of the Pacific,
California Bankers' Association,
Committee on Insurance.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Guaranteed Renewal for Claims Endorsement -- APC308

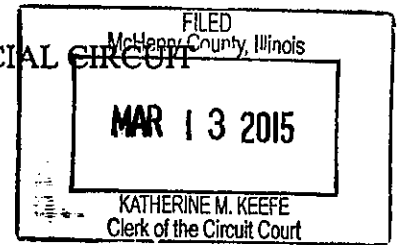
When the Policy Declarations indicates that the Guaranteed Renewal for Claims Endorsement applies, the following provision is added to the **General** section of the policy:

Guaranteed Renewal for Claims

When this Guaranteed Renewal for Claims provision is part of the policy, any decision by **us** not to renew or continue the policy will be made without regard to the number of claims reported under the policy. However, nothing in this provision shall limit **our** right not to renew or continue the policy for any other legally permissible reason(s), including the type(s) of claims reported under the policy.

All other policy terms and conditions apply.

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS



PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

COPY

NOTICE OF MOTION

TO: ***VIA FIRST CLASS MAIL:***

Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

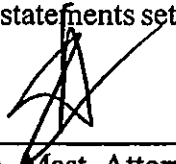
VIA CERTIFIED MAIL:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.



Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

3416 West Elm Street

McHenry, IL 60050

815-344-3797

Attorney ID No. 06208070

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PS Form 3800, August 2006

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

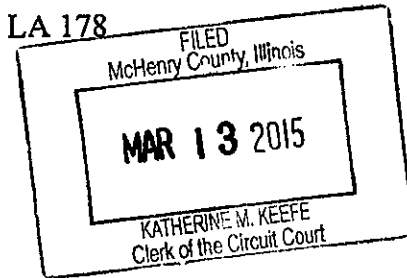
Plaintiff,

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

No. 12 LA 178



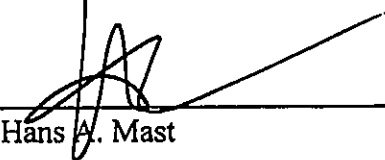
MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.
2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,


Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

1 IN THE CIRCUIT COURT
2 FOR THE 22ND JUDICIAL CIRCUIT
3 McHENRY COUNTY, ILLINOIS
4

5 PAUL DULBERG,)
6 Plaintiff,)
7 vs.) No. 12 LA 178
8 DAVID GAGNON,)
9 Individually, and as)
10 Agent of CAROLINE)
11 McGuire and BILL McGuire)
12 and CAROLINE McGuire and)
13 BILL McGuire,)
14 individually,)
15 Defendants.)
16
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24

14 The deposition of WILLIAM McGuire, taken in the
15 above-entitled cause, before Paula Ann Erickson,
16 Certified Shorthand Reporter, Registered Professional
17 Reporter and Notary Public, on March 20, 2013, at 3421
18 West Elm Street, McHenry, Illinois, at the approximate
19 hour of 2:25 p.m.
20
21

22 REPORTED BY: PAULA A. ERICKSON
23 C.S.R. LICENSE NO. 084-003899
24

1

I N D E X

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3

APPEARANCES:

1 MR. HANS MAST
2 LAW OFFICES OF THOMAS J. POPOVICH
3 3416 W. Elm Street
4 McHenry, Illinois 60050
5 (815) 344-3797

6 Appeared on behalf of the Plaintiff.

7 MR. RONALD A. BARCH
8 CICERO, FRANCE, BARCH & ALEXANDER, PC
9 6323 East Riverside Boulevard
10 Rockford, Illinois 61114
11 (815) 226-7700

12 Appeared on behalf of the Defendants, Carolyn
13 and Bill McGuire.

14 MR. PERRY A. ACCARDO
15 LAW OFFICE OF M. GERARD GREGOIRE
16 200 North LaSalle Street
17 Suite 2650
18 Chicago, Illinois 60601
19 (312) 558-9821

20 Appeared on behalf of the Defendant, David
21 Gagnon.

22 * * * *
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24

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1 THE REPORTER: Sir, can you raise your right
2 hand, please?

3 WILLIAM McGuire,
4 after being first duly sworn, deposeth and saith as
5 follows:

EXAMINATION

6 BY MR. MAST:

7 Q. Please state your name, sir.

8 A. William McGuire.

9 MR. MAST: This is the discovery deposition of
10 William McGuire, taken pursuant to notice, in
11 accordance with the applicable rules.

12 BY MR. MAST:

13 Q. Mr. McGuire, what's your address?

14 A. 1016 West Elder Avenue, McHenry,
15 Illinois 60051.

16 Q. Okay. And you live with Carolyn?

17 A. Yes.

18 Q. She is your wife?

19 A. Yes.

20 Q. How long have you been married?

21 A. I am not remembering very good. '91. Since
22 '91.

23 Q. Okay. And you have always lived at that
24

4

1 address? Dulberg Clinton Subpoena000165 2 A. Let's see. 3 Q. I meant during your marriage. 4 A. I moved in in '89. 5 Q. At the Elder address? 6 A. Correct. 7 Q. Before you were married? 8 A. Yeah. Yes. 9 Q. Okay. Do you have any prior marriages? 10 A. No. 11 Q. Okay. Any children? 12 A. No. 13 Q. Okay. Okay. And Carolyn has three children, 14 two daughters and a son, correct? 15 A. Yes. 16 Q. And the son is David Gagnon? 17 A. Yes. 18 Q. Okay. And have you known Dave -- Well, let 19 me ask this: How long before you were married did you 20 know -- 21 A. I have known Dave since 1984. 22 Q. How did you meet Dave? 23 A. Through his mother. 24 Q. So you have known Carolyn since '84 as well? 5	1 A. Yes. 2 Q. Okay. So you have some type of permanent 3 chronic back problem? 4 A. Yes. 5 Q. All right. I am sure you have used a chain 6 saw in your life, correct, or not? 7 A. No. 8 Q. So you never used a chain saw? 9 A. No. 10 Q. Okay. Although we have a chain saw here on 11 the table that I am understanding you and Carolyn 12 purchased -- 13 A. Correct. 14 Q. -- the same year as Paul's accident at your 15 house? 16 A. Yes. 17 Q. Okay. And I might be wrong but I am taking 18 this from what Carolyn said but Carolyn said that 19 sometime early 2011 before Paul's June 2011 accident 20 you two purchased this chain saw that's here on the 21 desk today? 22 A. Yes. 23 Q. And it's a red bodied chain saw and it's a 24 gas chain saw, correct? 7
1 A. Correct. 2 Q. Okay. Is that when you started kind of 3 dating, that type of thing? 4 A. Yes. 5 Q. Where did you meet? Through what kind of -- 6 A. Where did I meet Carolyn? 7 Q. How did you meet Carolyn? I'm sorry. 8 A. I met Carolyn at a marina. 9 Q. Okay. And are you retired? 10 A. Yes. 11 Q. What is your work -- Before you retired, what 12 were you doing? 13 A. Carpenter. 14 Q. Okay. When did you retire? 15 A. '06. 16 Q. Is that because of the disability? 17 A. Yes. 18 Q. Okay. Are you -- What's your injury? What's 19 your disability, back? 20 A. Correct. 21 Q. Okay. So you are not able to do heavy type 22 work; is that correct? 23 A. No. 24 Q. Is that correct? 6	1 A. Yes. 2 Q. From Efco, E-F-C-O, MT, 3500. That's what I 3 am reading off of it; is that right? 4 A. Yes. 5 Q. Yes? 6 A. Yes. 7 Q. Okay. Who purchased it? 8 A. I did. 9 Q. Okay. Where did you purchase it from? 10 A. Menards. 11 Q. And since you have never used the chain saw 12 before and I am assuming because of your injury you 13 weren't planning on using this one, why did you 14 purchase it? 15 A. Well, I was wondering if we had a storm come 16 through and some trees come down I would learn how to 17 use it. I am a carpenter. 18 Q. Okay. 19 A. And I pick up things very quick but if I 20 don't have to use it, I don't want to use it. 21 Q. Okay. So you got it in case? 22 A. Emergency, correct. 23 Q. Okay. And you got it for your use, not 24 anybody else's? 8

1 A. Yes. Dulberg Clinton Subpoena000166 2 Q. For yours, I mean, you physically? 3 A. Personally. Personally in case we have trees 4 come down or any of that problems. 5 Q. But for you to use, correct? Not for you to 6 have somebody else use. You got it for you to use; is 7 that correct? 8 A. Basically I bought it if one of the kids 9 wanted to borrow it, I would let them borrow it. 10 Q. I understand the options there, but I am 11 asking the reason you bought it is for you to use, not 12 somebody else to use? 13 A. Yes. 14 Q. There is options, anybody can use it. I get 15 that. 16 A. Yes. 17 Q. But you bought it for yourself to use, 18 though, correct? 19 A. Yes. 20 Q. All right. How long have you known Paul 21 Dulberg? 22 A. I probably met him in the '80s because David 23 and him were probably friends and, you know, kids come 24 over and come and go and that's probably when I ran 9	1 A. You know, probably -- I believe it was. I 2 believe it was. 3 Q. Carolyn seemed to think the apple tree 4 cutting was sometime in May of that year. 5 A. You know, she was probably right. It was 6 before the pine tree. 7 Q. The evergreens or -- 8 A. Well, I call them evergreen, pine tree. 9 Q. Same thing. Right. Before Paul's accident? 10 A. Yes. 11 Q. Right. Okay. So according to you, sometime 12 in May 2011 when the apple tree was being cut down by 13 Dave, Paul was also there to help and he used it to 14 cut the stump? 15 A. The stump, the tree stump. 16 Q. Down lower? 17 A. Yes. 18 Q. Okay. And that's the only time -- So the 19 only time you ever saw Paul use a chain saw before his 20 accident in June 2011 was the one time at your house 21 when he cut the stump off that apple tree? 22 A. Yes. He got the stump lower to the ground. 23 Q. Is that true? What I just said, is that 24 true? I will say it again because you interrupted me 11
1 across him the first time. 2 Q. All right. Before -- I think Paul's chain 3 saw accident at your house was sometime June 2011; is 4 that your understanding? 5 A. Yeah. 6 Q. Okay. Did you know Paul to ever use a chain 7 saw before his injury at your house in 2011? 8 A. Yes. He was on the property and David used 9 the chain saw. 10 Q. Are we talking the day of his accident? 11 A. This is prior. 12 Q. Okay. Go ahead. 13 A. Because you were asking if Paul -- I ever saw 14 him operate a chain saw. 15 Q. You are right. 16 A. And he was at the house. David cut down an 17 apple tree in the backyard and I saw Paul use the chain 18 saw on an apple -- the stump, the apple stump, to try 19 to get it closer to the ground. That's the only time I 20 ever seen him use the chain saw. 21 Q. Fair enough. Was that in the same year of 22 his accident at your house? 23 A. That was prior. 24 Q. Same year, though? 10	1 by adding on. Let's just answer what my question is. 2 Okay. My question is: The only time 3 you ever seen Paul use a chain saw before his accident 4 at your house in June 2011 was when he cut the stump 5 down a little bit lower from the apple tree that was 6 at your house in May of 2011? 7 A. Yes. The one David Gagnon cut down and he 8 got the stump down lower, yes. 9 Q. Is what I just said true? 10 A. Yes. Yes. 11 Q. All right. Because you keep adding. Just 12 answer -- If you don't understand my question, I will 13 reword it, but try to answer what I am asking instead 14 of adding on to what my question is, all right? 15 A. Okay. 16 Q. Got me? 17 A. Yeah. 18 Q. Did you see Paul doing anything with the use 19 of the chain saw that you thought dangerous or unsafe 20 before his accident? 21 A. No. 22 Q. Did you know that Paul -- and I'm not sure he 23 was but I have to ask you. On the day of Paul's 24 injury at your house in June 2011, you know, with Dave 12

1 there, do you know if Paul was ever even using the 2 chain saw that day? 3 A. No. 4 Q. Do you know? You don't know? 5 A. I don't know if he was using the chain saw. 6 Q. That's what I am asking. Okay. Let me ask 7 you a couple questions and today -- Well, let me ask 8 it this way: When is the last time you spoke or saw 9 Paul? 10 A. Probably three weeks ago in a grocery store. 11 Q. Did you speak to him or just see him? 12 A. Said hi. 13 Q. Did he say hi to you? 14 A. Yes. 15 Q. Was that it? 16 A. Correct. 17 Q. Did you see him carrying anything? 18 A. No. 19 Q. Okay. Did you see him do anything that would 20 suggest he wasn't having problems with his arm that he 21 cut in this chain saw accident at your house in 2011? 22 A. I did not see him doing anything but walking 23 with his mother. 24 Q. Okay. Before Paul's accident in June 2011 at 13	1 honest. Okay. Why do you think he is a fibber? 2 A. You know, it should be cut and dry. I mean, 3 it was an accident. 4 Q. Right. All right. 5 A. And that's all I know. 6 Q. Is it -- So I am reading into this, you can 7 tell me if I am wrong, but is it because a lawsuit was 8 filed; is that why? 9 A. Duh. Yes. 10 Q. Well, listen, I have to ask these questions, 11 sir. Let me just go through this and make it easy for 12 me, all right? 13 A. I'm sorry. Yes. 14 Q. You are making it hard. The fact that a 15 lawsuit was filed and you are part of that lawsuit has 16 that made you feel that he is a fibber? 17 A. Well -- 18 Q. Or I am trying to find out. 19 A. Basically, since the lawsuit was filed and, 20 you know, it wasn't cut and dry, I just probably don't 21 want nothing to do with him now, so. 22 Q. Okay. So let me -- again, I have -- because 23 some of the words you have used, I have to ask you 24 about it. Do you feel he is a fibber or you just 15
1 your house, were -- did you consider him a friend, 2 just a friend of your stepson's? How did you -- What 3 was his status with you? 4 A. I considered him a friend of my stepson. 5 Q. Okay. So more of an acquaintance to you 6 then? He wasn't somebody you'd socialize with outside 7 of your son or something then? 8 A. Correct. If he wasn't around for my son, he 9 didn't come around. 10 Q. So he wasn't like your buddy or anything? 11 A. No. No. 12 Q. Okay. So you were on good terms with him 13 because he was obviously on good terms with your son 14 before this accident occurred, right? 15 A. Yes. 16 Q. Did that change at all at least in your mind? 17 Now Dave has spoken his peace so we don't even need to 18 go into what Dave thinks, but in your mind has your 19 feelings about Paul changed today versus before his 20 injury at your house? 21 A. Yes. 22 Q. Okay. Good, bad, indifferent, what? 23 A. Well, I think he is a fibber. 24 Q. Okay. Fair enough. You are just being 14	1 don't like the fact that he filed a lawsuit against 2 you? 3 A. I don't like the fact that he filed a 4 lawsuit. 5 Q. Okay. So fibber meaning liar, you are not 6 calling him a liar? 7 A. No. No. No. I'm sorry. Just because he 8 filed a lawsuit. 9 Q. All right. So let me -- Again, I got to 10 clear that up now. Do you believe in your mind that 11 Paul is a fibber or a liar or don't you know? 12 A. I don't know. 13 Q. Okay. And I meant more about this lawsuit 14 obviously. You don't know if he is lying or fibbing 15 about the lawsuit because you don't know what 16 happened, right? 17 A. Yes. 18 Q. Fair enough? 19 A. Yes. 20 Q. Okay. So you would not characterize him as a 21 fibber for filing the lawsuit because you don't know 22 if he is or not, true? 23 A. True. True. Yes. 24 Q. Before the accident occurred at your house in 16

1 June 2011, did you believe Paul was a credible, honest 2 soul, person? 3 A. Yes. 4 Q. Okay. Did you have any reason to believe 5 that he would fib prior to this accident? 6 A. No. 7 Q. Okay. All right. Have you heard -- Well, 8 let me put Dave aside for a minute. Other than 9 through Dave, have you heard that Paul was trying to 10 make more out of this accident than was warranted 11 other than -- I'm sorry. Let me -- 12 MR. BARCH: Other than David or his attorney. 13 BY MR. MAST: 14 Q. Yeah. Other than through Dave or Dave's 15 attorney or your attorney I guess, have you heard 16 either from Paul or anybody else -- 17 A. No. 18 Q. -- something to the effect that Paul was 19 trying to make more out of this claim or accident than 20 he should? 21 A. I have not heard nothing, no. 22 Q. Okay. Have you ever heard Paul suggest since 23 his accident that he was trying to get people to say 24 things to make this case worth more than it is? 17	1 Q. Hold on. Let me finish the question -- so he 2 can retire or make a lot of money out of this case? 3 Has he said that? 4 A. No. Dave has never told me that. 5 Q. Okay. Okay. So I just want to make one 6 other question on that just to make sure I covered 7 everything. 8 Is it fair to say then other than maybe 9 through your attorney you have never heard any 10 allegation or suggestion whether by Paul or anybody 11 else, Dave, Paul, anybody, that Paul was trying to 12 make more out of this case than was justified and/or 13 trying to get people to talk in favor of him in return 14 for anything? Have you ever heard those things? 15 A. Other than David's comments or maybe my 16 attorney a little bit, I haven't heard nobody else say 17 a word. 18 Q. Okay. Including Paul, correct? 19 A. Oh, yeah. 20 Q. Okay. So what did Dave tell you in that 21 regard? 22 A. Dave was saying that somehow the accident 23 happened different than when the way Paul was 24 describing it. 19
1 A. No. 2 Q. Have you ever heard Paul since his accident 3 or anybody -- Strike that. 4 Have you ever heard Paul since his 5 accident ever suggest that he may never have to work 6 again in his life or he is going to be able to be rich 7 or anything like that, those issues, since this 8 accident? 9 A. No. 10 Q. Okay. Have you heard those through Dave? 11 A. No. 12 Q. Dave has not even told you those things that 13 Paul has said supposedly? 14 A. David has told me that he is not telling the 15 truth. 16 Q. Okay. 17 A. That's what he told me. 18 Q. All right. So Dave told you Paul is not 19 telling the truth about the accident. 20 A. Correct. 21 Q. But has Dave ever told you since the accident 22 that Paul was trying to get him to lie or get him to 23 say things so that they can retire? 24 A. Dave -- 18	1 Q. Okay. And that's not quite what I asked so 2 let me go back because we are going to get into that. 3 Okay. 4 Let me -- My question was framed more to 5 other than your attorney, have you heard from anyone 6 including Paul, including Dave, anyone, that Paul was 7 trying to get people to fabricate or lie to his favor 8 in this case or to help him recover in this case? 9 A. No. Nobody told me that. 10 Q. Not Dave, not Paul, nobody, right? 11 A. The only thing I am saying is the question 12 you are asking me is the same question I am saying is 13 if it's got to pertain to the accident, David didn't 14 agree with the way Paul stated the accident happened. 15 Other than that -- 16 Q. And I understand there is two versions of the 17 accident. I understand that. 18 A. Correct. 19 Q. My question was different, though. My 20 question was: Have you ever heard, other than through 21 your attorney, that either Paul or Dave suggested that 22 Paul was wanting people to lie for him or to fabricate 23 anything? 24 A. Other than Dave and my attorney, no. Nobody 20

1 has told me anything about -- 2 Q. I am including Dave in that. What did Dave 3 tell you about Paul wanting him to fabricate or lie? 4 Did he say that? 5 A. As far as Paul telling David to change the 6 story or fabricate? 7 Q. Yeah. Did he do that? 8 A. David never mentioned it to me like that, no. 9 Q. Okay. So all right. So let me say the 10 question again then. Is it fair to say, and putting 11 your attorney's comments to you aside, okay, I am not 12 asking you about your attorneys, but with regard to 13 anybody else, you have never heard anyone suggest that 14 Paul was trying to get Dave to lie, fabricate about 15 this case, fair enough? 16 A. Yeah. 17 Q. Okay. You never heard that? 18 A. No. 19 Q. All right. As I understand it, there are two 20 evergreens in your backyard back in June 2011 that you 21 guys wanted cut down so you could put a storage shed 22 back there, right? 23 A. Yes. 24 Q. Okay. And as I understand it, I don't 21	1 A. Uh-huh. 2 Q. All right. So whatever the arrangement was 3 between Carolyn and Dave as far as what he would get 4 in return for doing this work, you don't know; fair 5 enough? 6 A. Yes. 7 Q. Okay. And what was Dave's experience, if you 8 know, in use of a chain saw before this accident with 9 Paul at your house? 10 A. Stuff I have heard, a project he worked on 11 through the course of me living there and physically 12 seeing him prune the trees on the property with a chain 13 saw. 14 Q. Okay. 15 A. That's about the extent of it. 16 Q. With a chain saw? 17 A. Correct. 18 Q. With your chain saw? 19 A. No. We didn't have it then. 20 Q. Okay. With his chain saw on his property? 21 A. No. Back when David lived at the house. 22 Q. With you? 23 A. On our property when David lived there -- 24 Q. Right. 23
1 remember if it was you or your wife, but one of you 2 asked Dave to do that work -- help with that work, 3 right? 4 A. Yeah. Knock some lower branches down. 5 Q. Right. Who asked him to do that? 6 A. You know, I don't remember. 7 Q. Okay. It was either you or your wife? 8 A. Correct. 9 Q. And I think your wife said she was going to 10 pay Dave something for his gas or whatever, right? 11 A. Basically, she'd give him a pair of pants. I 12 don't know. They are always mothering the son, you 13 know. 14 Q. Right. So what their arrangement was as far 15 as money or -- 16 A. Some kind of gift. 17 Q. Listen, you are going to make this last twice 18 as long as -- I'd like to get you in and out of here 19 as quick as possible but because I have to keep 20 repeating the question, it's going to make it 21 difficult so I am just trying to tell you we can 22 probably get out of here real quick but I am going to 23 have to keep backing up. So let me try to move 24 forward but let me finish my question, okay? 22	1 A. -- I don't know where he got the chain saw 2 but he had a chain saw and he done some pruning on the 3 property and that I have seen him do. 4 Q. Okay. Okay. And how often was that? Just 5 the one time or was it repeatedly? 6 A. I would say a handful of times. 7 Q. Okay. Over the course of several years? 8 A. Yeah. Correct. 9 Q. And that was while he was living with you? 10 A. Yeah. 11 Q. And that's the only time you have known him 12 to use a chain saw other than in 2011? 13 A. This goes back in, you know, in say in the 14 mid '80s, in the '90s, you know, whenever he would go 15 around the yard and prune stuff up with the chain saw. 16 Q. Did you have a chain saw at the house at that 17 point? 18 A. Not mine. You know, he might have borrowed 19 one from a friend or he might have had one. I don't 20 know. 21 Q. Okay. In 2011 other than the two evergreen 22 trees he was going to take some of the branches down 23 off of, did he do -- did Dave do any other work with 24 the chain saw on your property in that year? 24

1 A. Cut the apple tree down. 2 Dulberg Clinton Subpoena 000170 3 Q. Okay. Anything else? 4 A. No. 5 Q. Okay. 6 A. You know, he did a little chain saw work. 7 No. That was about it. That was about it that I 8 remember. 9 Q. Okay. So the apple tree and the two 10 evergreens, those are the only chain saw work he was 11 doing at your house in 2011, correct? 12 A. That I remember. You know, I'm trying to 13 remember because I know Paul took some scrap from the 14 front yard from a maple tree. 15 Q. Yeah. Your wife said just to -- 16 A. And -- 17 Q. Go ahead. 18 A. And I don't remember if he used the chain saw 19 to cut them pieces up a little further but I don't 20 remember that. 21 Q. What your wife said was a tree company took 22 that tree down. 23 A. Yes, they did. 24 Q. Let me finish. And left some stumps or 25 sections and Paul and Dave cut those sections up so	1 A. Watching TV. 2 Q. Okay. Was that -- Do you know about what 3 time Paul's accident occurred that day? 4 A. I don't remember. 5 Q. If you were watching TV when his accident 6 occurred, would that have been pretty much what you 7 were doing for most of the day prior to leading up to 8 his accident or were you doing other things in the 9 house? 10 A. I was in the house. I am trying to 11 remember -- I might have walked around a little bit, 12 you know, and then I was in the house. 13 Q. Did you ever go outside the house while Paul 14 and Dave were in the backyard working? 15 A. No. 16 Q. So would it be fair to say that day of Paul's 17 accident before his injury, you don't know who was 18 doing what type of work, where, when or how? 19 A. That's true. 20 Q. Okay. And you never viewed at any time prior 21 to Paul's injury what they were doing back there in 22 the backyard, correct? 23 A. That's correct. 24 Q. Do you know what -- I know that you said Dave 27
1 Paul could have firewood. That's what she said. 2 A. I -- 3 Q. You don't know? 4 A. I know Paul took the wood, the bulk of the 5 wood. 6 Q. Who cut it up, you don't know? 7 A. No. 8 Q. Okay. So the only time you know that Dave 9 used a chain saw on your property in 2011 was the two 10 evergreens that he was cutting branches off at the 11 time Paul was hurt and the one apple tree? 12 A. Yes. 13 Q. Okay. I think Paul's accident was June 28, 14 2011. Do you know that to be true or not? 15 A. You know, it sounds -- but I don't know. 16 Q. Do you know what day of the week it was? 17 A. No. 18 Q. Okay. You were retired so you would have not 19 been working. Would you have been home at the time? 20 A. Yes. 21 Q. What were you doing at the time of Paul's 22 injury? 23 A. I was in the house. 24 Q. Doing what? 26	1 was going to cut down some limbs from the two 2 evergreens, right? 3 A. Yes. 4 Q. And I think Carolyn then said ultimately once 5 the limbs were down, you were going to have the tree 6 company come out and cut the big base of the tree 7 down, right? 8 A. Yes. 9 Q. So Dave's task was really just to take the 10 branches off the base of the tree, right? 11 A. Yeah. 12 Q. All the way up? 13 A. No. No. It was too high. 14 Q. So just up to a certain level? 15 A. Yes. Yes. 16 Q. Okay. How high, do you know? 17 A. You know, I want to say, I don't know, 15, 20 18 some feet. You know, I don't know. It was tall trees. 19 That's all I am saying. 20 Q. And the limbs at the bottom are bigger than 21 the limbs at the top, right? 22 A. Yes. 23 Q. How wide -- if you have an estimate, how wide 24 are the limbs, the branches, coming off the evergreens 28

1 at the bottom of the trees? Dulberg Clinton Subpoena000171 2 A. Oh, they had to be -- in the base of it had 3 to be, I don't know, four or five feet, something like 4 that. 5 Q. How wide around? 6 A. Oh, wide around, inch and a half in diameter. 7 Q. Okay. All right. And do you have any idea 8 of how many total branches needed to be cut down by 9 Dave? 10 A. No. 11 Q. Okay. Was it more than 20? 12 A. Oh, yeah. Probably. 13 Q. There was a lot of them? 14 A. Probably, yes. 15 Q. Do you know when he started this work in 16 relationship to the day of the accident? 17 A. The day before. 18 Q. Okay. Do you know how many hours he worked 19 the day before? 20 A. Maybe an hour and a half, a couple hours I 21 think. I really don't remember. 22 Q. Okay. So after working the day before, there 23 would have been branches already on the ground, right? 24 A. Correct. 29	1 was there? 2 A. Yes. 3 Q. You didn't know he was there by seeing him? 4 A. Yes. I seen him on the property. 5 Q. All right. When he got there or during the 6 course of the day? 7 A. I don't know when the exact time he arrived 8 but I looked out in the yard and there was him and his 9 dog. 10 Q. Okay. And did you go outside when you saw 11 him there? 12 A. Maybe I was outside or something. I don't 13 remember coming in and out but -- 14 Q. This is what I am trying to understand, you 15 said you never saw what they were doing. 16 A. Right. 17 Q. Paul and Dave, so I am assuming what did the 18 dog come inside and that's when you petted him or when 19 did you pet the dog? 20 A. They were working behind the garage and I 21 didn't go behind the garage where they were working but 22 if you come up to the back -- the back of the house, 23 before you go around the garage, that's where I saw 24 David, Paul and the dog. I went outside, petted the 31
1 Q. And did you know Paul was coming over to help 2 out? 3 A. No. 4 Q. Did you know who invited him over? 5 A. No. 6 Q. Okay. Did you even know he was on your 7 property when -- 8 A. Yes. 9 Q. Let me finish the question. Did you even 10 know Paul was on your property by the time he got 11 hurt? 12 A. Yes. 13 Q. How did you know he was on the property? 14 A. Because I seen him out in the yard. I petted 15 his dog. 16 Q. You mean when he arrived? 17 A. Sometime through the course when he was 18 there. 19 Q. Oh, because I asked you before if you ever 20 saw them work during the process of their work and you 21 said no, so. 22 A. I didn't see them working but I petted his 23 dog. 24 Q. Oh, so you knew he was there because his dog 30	1 dog, said hi to Paul and I went back in the house. 2 Q. All right. So you were only outside a minute 3 or two? 4 A. Yeah. Not long. 5 Q. Okay. And you went out there specifically to 6 pet the dog and say hi to them or for some other 7 reason? 8 A. You know, I might have been taking out a bag 9 of trash. I don't remember. 10 Q. Okay. And where you saw Paul and Dave, were 11 they engaged in the tree work at the time or had they 12 taken a break? What were they doing? 13 A. No. No. Just chitchatting. 14 Q. Okay. So this is before they began work that 15 day, during the midst of their work, do you know? 16 A. I couldn't tell you. 17 Q. Okay. What time was this, do you know? 18 A. No. I don't remember. 19 Q. Do you know how long Paul was at the property 20 already by the time you went back to pet the dog and 21 say hi to him? 22 A. No. 23 Q. Okay. Where you saw them was that in the 24 area that they would have been working to cut the tree 32

1 down Clinton Subpoena000172 2 A. No. 3 Q. -- or was that somewhere else? 4 A. It was in -- It was like by the driveway and 5 the work was in the back of the -- towards the back of 6 the yard. They were in the -- by the -- say around the 7 back door of the back porch. 8 Q. Of the house. 9 A. Correct. 10 Q. Why were they there in relationship to the 11 work they were doing? Do you have any idea? 12 A. No. I don't know what they were doing. They 13 were standing there talking and the dog was sitting 14 there. 15 Q. All right. Your wife was inside? 16 A. Yes. 17 Q. Did you know your wife ever to go outside 18 while they were working that day? 19 A. She might have -- Go ahead. 20 Q. Did you know if your wife was ever outside 21 that day of Paul's injury before his injury? 22 A. I don't keep track of her. 23 Q. So the answer is you don't know? 24 A. I don't know. 33	1 they were getting in the vehicle to go to the -- to get 2 patched up. 3 Q. To go to the hospital? 4 A. Yeah. 5 Q. Okay. So was Paul's arm already wrapped? 6 A. You know, I am trying to remember if my wife 7 was getting him a towel or something like that. I 8 don't know but all I know is they were beelining it for 9 the -- a vehicle. 10 Q. Okay. So they were on their way from the 11 house to the car? 12 A. Yeah. Yeah. So I might have caught a 13 glimpse of them by the back door going to the -- I am 14 trying to remember and then something about -- oh. 15 Yeah. I did hear him say from the vehicle please watch 16 my dog. 17 Q. Okay. Paul said that? 18 A. Yes. Yeah. 19 Q. It was Paul's dog? 20 A. Yes and I believe he was already in the 21 vehicle when he yelled out the window that. 22 Q. Okay. So they were already basically gone -- 23 A. Yeah. 24 Q. You didn't have a chance to talk to them, 35
1 Q. Okay. All right. So when you went outside, 2 you met up with them kind of at the rear of the house? 3 A. Yes. 4 Q. But they were not engaged in the work at the 5 time, right? 6 A. Right. 7 Q. And you pet the dog and went back inside? 8 A. Yes. 9 Q. Okay. And that's the extent of your time 10 outside the house prior to Paul's injury to your 11 knowledge? 12 A. Yeah. 13 Q. Okay. So you don't know who was doing what 14 that day, when and how, fair enough? 15 A. Yes. I don't know. 16 Q. As far as Dave and Paul, you don't know who 17 was doing what -- whose tasks were what tasks or what 18 they were doing, fair enough? 19 A. I don't know. I don't know. 20 Q. Is that fair enough then? 21 A. That's -- I don't know. Correct. 22 Q. Okay. What is your first knowledge or notice 23 of Paul's accident then? 24 A. I heard some commotion and I ran outside and 34	1 right? 2 A. I did not talk to them. 3 Q. So by the time they were leaving for the 4 hospital in the car that you saw, you didn't know what 5 happened other than there must have been some injury? 6 A. Correct. 7 Q. Did you know who was injured? 8 A. Yes. Paul. 9 Q. How did you know that? 10 A. My wife said Paul is injured. 11 Q. Did she say how he got injured? 12 A. No. 13 Q. Okay. After he left, Paul left with Dave to 14 the hospital, when did you next see Paul and Dave? 15 A. When they came back from the hospital. 16 Q. How many hours later? 17 A. It seemed like three, four. 18 Q. And did you speak to Paul and Dave? 19 A. Yeah. 20 Q. What did they say? 21 A. Well, they weren't talking too much. I asked 22 Paul how he is feeling. He said I am a little sore and 23 I asked David, you know, and Dave says not too good. 24 You know, he says -- weren't in a very talkative mood. 36

1 Q. Not too good meaning Paul wasn't too good or Dulberg Clinton Subpoena 000173 2 what? 3 A. Well, Paul basically just came back and he -- 4 I am trying to figure out how he got home. Maybe 5 Mike -- 6 Q. I am not evening asking that right now. 7 A. Okay. 8 Q. My question is: What did Paul and Dave say 9 when they arrived home at the hospital? You said Paul 10 said I am sore. Then David -- 11 A. David really wasn't talking at all. 12 Q. Did either of them discuss how the accident 13 occurred with the chain saw? 14 A. No. No. 15 Q. How long were they back at the house? 16 Short -- Were they only there for a short period of 17 time? 18 A. Yes. Yes. 19 Q. And did they both leave again? 20 A. I am trying to remember how he got home. 21 Q. I'm not asking how anybody got home. I am 22 asking once they arrived home with Paul and Dave, they 23 then left again or don't you know that? 24 A. You know, I don't remember if he came back to 37	1 A. Dave didn't really talk. 2 Q. Okay. How long did they stay home? 3 A. A minute or something. He was collecting on 4 the dog. 5 Q. Okay. Then what did they do? 6 A. Let's see. Mike McArtor picked the dog up. 7 Maybe he took Paul, too. I don't remember. 8 Q. All right. 9 A. I don't remember. 10 Q. At least what Carolyn says is that Dave and 11 Paul drove away to fill his prescription and then Dave 12 came back alone. 13 A. You know, they could have. They could have. 14 Q. So you don't know that? 15 A. Right. 16 Q. Okay. All right. So by the time Dave 17 returned home, whether Paul was with him or not, you 18 don't know? 19 A. I don't know. 20 Q. Okay. Did Dave tell you -- now this is still 21 the same day of the accident? Did Dave tell you how 22 the accident occurred? 23 A. No. 24 Q. Has Dave ever described for you how the 39
1 our house or he came back to his house. 2 Q. Who is "he"? Who, Paul? 3 A. After the emergency room. 4 Q. Who? 5 A. Paul. 6 Q. Who is "he"? Okay. 7 A. I don't remember if he came back to our house 8 or I don't remember if David drove him directly home to 9 his house. I don't remember that. I am trying to 10 remember that. 11 Q. Okay. All right. So when -- You would not 12 have talked at least -- 13 A. Wait a minute. I do remember now. He did 14 come back to our house and I asked him how you doing 15 and he says okay. And then -- 16 Q. Who is "he"? I don't know who you are 17 talking about. 18 A. Paul, the guy that got hurt. 19 Q. Paul said I am okay? 20 A. I asked him how are you doing? Paul said I 21 am okay. 22 Q. Okay. Did he say anything else? 23 A. No. 24 Q. And then what did Dave say? 38	1 accident occurred? 2 A. Yeah. 3 Q. When? First time. 4 A. Probably a day or so later. 5 Q. What -- So a day or so after the accident, 6 Dave had a conversation with you? 7 A. Yeah. 8 Q. What did he say? 9 A. He says -- How did it go? He stuck his 10 arm -- 11 Q. Who is "he"? I need names so I know who you 12 are talking about. 13 A. Hang on. Hang on. He said that Paul stuck 14 his arm -- 15 Q. Wait. Stop. Dave said that Paul -- 16 MR. BARCH: Try to use names when you are 17 referring to the people. That's all he is asking. 18 THE WITNESS: Okay. David said that when working 19 with Paul, somehow Paul did something wrong and got 20 his arm cut. 21 BY MR. MAST: 22 Q. Did he explain what he did wrong? 23 A. No. He really didn't. 24 Q. Did he say that he got his arm cut on the 40

1 chain saw? Dulberg Clinton Subpoena000174 2 MR. BARCH: "He," David? 3 MR. MAST: You got me. 4 THE WITNESS: David said he got his arm -- Paul 5 got his arm cut on a chain saw. 6 BY MR. MAST: 7 Q. But David didn't specify how or what he did 8 to get cut? 9 A. No. No. 10 Q. Okay. Did Dave ever specify to you at any 11 other conversations about what Paul did and why it 12 caused him to get cut by the chain saw? 13 A. No. 14 Q. So other than that first conversation with 15 Dave where he just described generally that Paul did 16 something wrong to get cut -- 17 A. Yeah. 18 Q. -- did you have any other conversations with 19 Dave about how the incident occurred? 20 A. No. 21 Q. Was that the only time? 22 A. Basically, yeah. 23 Q. Okay. Dave never got more specific than 24 that? 41	1 Q. Where you just said hi to him? 2 A. Correct. 3 Q. So since Paul's accident at your house with 4 the chain saw, you have only spoken to him once and 5 that was at the supermarket when you said hi to him 6 and he said hi to you and that was it, right? 7 A. You know, I think he did come over. I don't 8 remember. I think he did come over and I asked him, 9 you know, how you doing or something like that and it 10 was probably a week or so after. 11 Q. Okay. Let me go back then. My question was 12 how many times have you spoken to Paul since the 13 accident. Your answer is twice, right? 14 A. Probably twice. 15 Q. Okay. The first time is one week after the 16 accident where Paul came over to the house, correct? 17 A. Yes. 18 Q. And who was present? 19 A. My wife. 20 Q. Okay. And Paul? 21 A. Yes. 22 Q. Okay. And what -- How long was Paul there? 23 A. A couple minutes with his dog. 24 Q. And what did Paul say to you or either of 43
1 A. No. 2 Q. All right. So any time you have talked to 3 Dave it's always been, well, Paul did something wrong 4 to get cut but he didn't specify anything more than 5 that? 6 A. No. 7 Q. Is that correct? 8 A. Yes. He didn't want to talk about that, and 9 he wasn't -- 10 Q. Is that correct what I just said? 11 A. Correct. 12 Q. Okay. Did you ever talk to Paul about how 13 the accident occurred? 14 A. No. 15 Q. Since the accident, have you ever talked to 16 Paul? 17 A. Yes. 18 Q. How many times? 19 A. Maybe -- I am trying to think here. That may 20 be once since the accident happened I have seen him in 21 the grocery store. 22 Q. Is that the one you talked about earlier 23 today? 24 A. Correct. 42	1 you? 2 A. Well, you know, basically said I am going 3 along. Everything is fine and, you know, my wife said 4 how you doing and exchanged pleasantries and that was 5 about it. 6 Q. Okay. Now, this is kind of what I'm wanting 7 to find out. Paul has obviously -- at least to me 8 obviously, has had some follow-up treatment and has 9 had some difficulties with his arm because of this 10 accident. Okay. Are you aware of that or not? 11 A. I have heard that, yes. 12 Q. Okay. So when you say a week afterwards that 13 he said I am doing fine, are you saying that 14 everything is great? He is not having -- 15 A. Well, he seemed to be -- 16 Q. Let me finish the question. Are you saying 17 that he related to you that everything is great, he is 18 having no problems or was he just trying to exchange 19 pleasantries and say yeah, everything is okay? 20 MR. BARCH: I just object to the form of the 21 question but go ahead if you understand it. 22 THE WITNESS: When the guy said he is fine, I 23 thought he was healing well and meant I am doing fine. 24 44

1 BY MR. MAST: Dulberg Clinton Subpoena000175 2 Q. Okay. Did he describe for you what he meant 3 by fine other than use the word -- 4 A. No. No. No. 5 Q. -- other than use the word fine in response 6 to your inquiry? 7 A. No. He didn't describe fine. 8 Q. Okay. Did he say I am pain free? 9 A. No. 10 Q. Did he say I am back to normal or anything in 11 that regard? 12 A. No. 13 Q. Okay. Did he ever describe for you, again 14 Paul, how the specifics of his accident occurred? 15 A. No. 16 Q. After that couple minutes at your house, he 17 left and you only saw him one other time, that was at 18 the supermarket where you exchanged hi's and that was 19 it? 20 A. Yes. Yes. 21 Q. And that was the one you described earlier on 22 in this deposition when you met him at the grocery 23 store? 24 A. Yes. 45	1 earlier in the year new from Menards, correct? 2 A. Yes. 3 Q. Okay. And Exhibit 2, is that a true and 4 accurate copy of the manual for that same chain saw 5 you purchased? 6 A. I believe so. 7 Q. And Exhibit 3 I believe is some additional 8 paperwork that came with it as well as the receipt on 9 the top, correct? 10 A. I assume so, yes. 11 Q. Well, take a look. I need you to make sure. 12 Is that what that is? Just take a look through all of 13 those documents in Exhibit 3 just to make sure those 14 were all documents that came with the purchase of the 15 chain saw. 16 A. Yes. They came with the chain saw. 17 Q. So all of the materials, Exhibit 2 and 3, all 18 those materials came with the purchase of the chain 19 saw, correct? 20 A. Yes. 21 Q. Okay. And they are all accurate copies of 22 those documents, correct? 23 A. Yeah. 24 MR. MAST: Okay. Thank you. That's all I have. 47
1 Q. Okay. And you never spoken or talked to Paul 2 other than those two times since the accident, 3 correct? 4 A. Yeah. 5 Q. All right. I think I am -- Oh, wait. I 6 wanted to ask you since I got these photographs, I 7 might as well get these marked. I will just mark one 8 of them because they are all the same. 9 (Whereupon, Deposition Exhibits 10 1, 2 and 3 were marked and 11 dated.) 12 BY MR. MAST: 13 Q. Okay. I just marked three exhibits. The 14 first one is a photograph we took today of the chain 15 saw that's on the table in front of you, correct? 16 A. Uh-huh. 17 Q. Yes. I need you to verbalize the answer yes. 18 A. Yes. 19 Q. Okay. Is that the chain saw you have talked 20 about over the course of your deposition today? 21 That's the chain saw that Dave was using at the time 22 of Paul's accident? 23 A. Yes. 24 Q. And that's the chain saw that you purchased 46	1 MR. ACCARDO: I do not have any questions. 2 EXAMINATION 3 BY MR. BARCH: 4 Q. Just earlier when Mr. Mast was asking you 5 about what you knew about Dave's experience with a 6 chain saw, you mentioned that he did some pruning of 7 trees. You saw him do that around your home? 8 A. Uh-huh. 9 Q. Yes? 10 A. Yes. 11 Q. Then you also said you heard some stuff about 12 him using chain saws? 13 A. Yes. 14 Q. And when you say you heard some stuff about 15 him using chain saws, what were you referencing? 16 A. I was referencing to him through the course 17 of the years when he was living there when I was living 18 there when he was out helping friends and coming back 19 home and saying something like I did some work for -- 20 pruning some trees on some people's property or, you 21 know, helping a friend out. 22 Q. Okay. So -- And to the extent David may have 23 had some experience with a chain saw away from your 24 home, you wouldn't know about that, you weren't there; 48

1 is that fair? Dulberg Clinton Subpoena000176 2 A. True. 3 Q. And at any time prior to Mr. Dulberg being 4 injured on June 28, 2011, did you have any reason to 5 be concerned about the manner or method that David was 6 using the chain saw? 7 A. No. I had no concern. 8 Q. At any time that day or the day before, did 9 you go out there and tell him how you wanted him to 10 use the chain saw? 11 A. No. 12 Q. Did you tell him how you wanted him to go 13 about tending to the trees, the pruning of the trees? 14 A. No. 15 Q. Is it fair to say that you left all the 16 cutting and the decisions on what to do and how to do 17 it up to David? 18 A. Yes. 19 Q. And with respect to what David and Paul may 20 have talked about, if anything, that day, how they 21 were going to go about using the chain saw, what they 22 were going to do with respect to those trees, you 23 weren't part of any of that? 24 A. True. I was not part of any of it. 49	1 IN THE CIRCUIT COURT 2 FOR THE 22ND JUDICIAL CIRCUIT 3 McHENRY COUNTY, ILLINOIS 4 PAUL DULBERG,)) 5 Plaintiff,)) 6 vs.) No. 12 LA 178) 7 DAVID GAGNON,)) 8 Individually, and as) 9 Agent of CAROLINE) McGUIRE and BILL McGUIRE) 10 and CAROLINE McGUIRE and) BILL McGUIRE,) 11 individually,)) 12 Defendants.) 12 I, WILLIAM McGUIRE, being first duly sworn, on 13 oath say that I am the deponent in the aforesaid 14 deposition taken on March 20, 2013; that I have read 15 the foregoing transcript of my deposition, and affix 16 my signature to same. 17 _____ 18 WILLIAM McGUIRE 19 Subscribed and sworn to 20 before me this _____ day 21 of _____, 2019 22 _____ 23 Notary Public 24 51
1 MR. BARCH: That's all I have. 2 MR. ACCARDO: I don't have anything. 3 MR. MAST: All right. 4 MR. BARCH: We are going to -- We are just going 5 to reserve. Carolyn is going to look at her 6 transcript. I will give you a chance to read it, too, 7 before it's final. 8 THE WITNESS: Okay. 9 (FURTHER DEPONENT SAITH NOT.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 50	1 C E R T I F I C A T E 2 3 4 I, Paula Ann Erickson, Certified Professional 5 Reporter, Registered Professional Reporter and Notary 6 Public, do hereby certify: 7 8 That the witness in the foregoing deposition 9 named was present at the time and place therein 10 specified; 11 12 That the said proceeding was taken before me 13 as a Notary Public at the same time and place and was 14 taken down in shorthand writing by me; 15 16 That this transcript is a true and accurate 17 transcript of my shorthand notes so taken, to the best 18 of my ability. 19 20 21 22 23 24 52

Dulberg Clinton Subpoena 000177
1 I further certify that I am neither counsel for
2 nor related to or employed by any of the parties to
3 this action and that I am not a relative or employee
4 of any counsel employed by the parties hereto or
5 financially interested in the action.

6
7 _____
8 Paula Ann Erickson
9 Certified Shorthand Reporter
10 Registered Professional Reporter
11 License No. 084-003899
12 Notary Public

13
14 Dated this ____ day
15
16 of _____, 2019.

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MEMORANDUM

TO: File

FROM: Hans

DATE: March 25, 2013

SUBJECT: **DISCOVERY DEPOSITION OF WILLIAM MCGUIRE**

CASE: PAUL DULBERG

On March 20, 2013, I took the discovery deposition of Bill McGuire before court reporter, Paula Erickson at Urbanski Reporting 312/977-1777. The transcript was ordered by defense counsel, we ordered a copy.

Bill McGuire is a very pleasant individual and will probably come across as a credible witness although he doesn't know a whole lot. He testified similar to his wife, Caroline to the following favorable and unfavorable points.

FAVORABLE TESTIMONY:

1. Prior to the accident he felt Paul was a credible and honest person and he had known him a long time because Paul was friends with his stepson, Dave.
2. Since the accident he has never known Paul to ask anyone to tell a lie or to fabricate any testimony.

UNFAVORABLE TESTIMONY:

1. He is not happy with Paul because he thinks Paul has filed suit against him for no reason and apparently according to his stepson, Dave Paul is not telling the truth about what happened although he doesn't know personally because he was not a witness.

Bill McGuire lives with his wife Caroline at 1016 W. Elder Avenue in McHenry. They have been married since 1991. He has no children, but Caroline has 3 including Dave Gagnon. He has known Dave Gagnon since 1984 when he first met his mother, Caroline at a marina. Bill has been retired since 2006 when he was a carpenter and hurt his back and could not return to work.

Bill has no experience using chainsaws. He has never used one in his life. Early 2011 he purchased a new chainsaw from Menards because he was thinking he might have to use one because of the storm maybe blowing trees or limbs down in his backyard. He also was going to have it available for anybody including his son, Dave who might need to use it.

The only time that he is aware of that the chainsaw was ever used was maybe in May 2011 when Dave had to cut an apple tree down in their yard. He believes Paul even used the chainsaw to cut the stump down a little bit further. After Paul's accident in June 2011, he only spoke to Paul once and that was at a supermarket when he saw him months after the accident and they said hi to each other. He doesn't know Paul's version of the accident. At first he called Paul a fibber because he filed suit against him but he realizes that maybe Paul isn't fibbing because he doesn't really know who is telling the truth or how the accident occurred. Paul never told him how the accident occurred in his words.

To his knowledge, Dave has used the chainsaw on a couple occasions on his property, one to cut the apple tree down a month before the accident and another time a day before Paul's accident to cut the branches from the evergreens. He explained that on June 28, 2011, he was in the house watching tv and he realized that Paul had arrived at some point because Paul was in the backyard helping Dave with the evergreens. He doesn't know when Paul first got there or how long he was there but apparently Dave started cutting the branches down the day before. Paul was there on this day to help Dave with the branches. He never saw them doing the work and therefore, he doesn't know who was doing what or when or how.

All of the sudden he heard a commotion in the backyard and saw that Paul and Dave were running to get in the car to get to the hospital. He realized that Paul was hurt. He was very unclear about when they arrived back from the hospital or if Paul arrived with Dave or whether Dave arrived back from the hospital alone.

But it wasn't until the next day that he spoke to Dave that Dave told him that Paul somehow caused the accident. He didn't specify what Paul did to cause the injury but just blamed it all on Paul and said Paul did something wrong. He never clarified what he meant by that.

One other time he spoke to Paul after the accident was maybe a week after the accident when Paul came over for about 2 mins and basically said that everything was fine. He didn't suggest that he was hurting anymore.

COPY

Discovery Deposition
of **CAROLYN McGUIRE**

Date: March 20, 2013

Case: Dulberg v. Gagnon

Urbanski
Reporting Company

Phone: 312-977-1777

IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 12 LA 178
	)	
DAVID GAGNON,	)	
Individually, and as	)	
Agent of CAROLINE	)	
McGUIRE and BILL McGUIRE	)	
and CAROLINE McGUIRE and	)	
BILL McGUIRE,	)	
individually,	)	
	)	
Defendants.	)	

The deposition of CAROLYN McGUIRE, taken in the
above-entitled cause, before Paula Ann Erickson,
Certified Shorthand Reporter, Registered Professional
Reporter and Notary Public, on March 20, 2013, at 3421
West Elm Street, McHenry, Illinois, at the approximate
hour of 1:00 p.m.

REPORTED BY: PAULA A. ERICKSON
C.S.R. LICENSE NO. 084-003899

1 APPEARANCES:
2

3 MR. HANS MAST
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5 3416 W. Elm Street
6 McHenry, Illinois 60050
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8 Appeared on behalf of the Plaintiff.

9 MR. RONALD A. BARCH
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13 (815) 226-7700

14 Appeared on behalf of the Defendants, Carolyn
15 and Bill McGuire.

16 MR. PERRY A. ACCARDO
17 LAW OFFICE OF M. GERARD GREGOIRE
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19 Suite 2650
20 Chicago, Illinois 60601
21 (312) 558-9821

22 Appeared on behalf of the Defendant, David
23 Gagnon.

24 * * * *

I N D E X

WITNESS

PAGE

CAROLYN McGUIRE

BY MR. MAST..... 4

BY MR. BARCH.....103

E X H I B I T S

(NO EXHIBITS MARKED)

1 THE REPORTER: Ma'am, can you raise your right
2 hand, please?

3 CAROLYN McGUIRE,
4 after being first duly sworn, deposeth and saith as
5 follows:

6 EXAMINATION

7 BY MR. MAST:

8 Q. All right. Please state your name.

9 A. Carolyn McGuire.

10 Q. Okay. And you are Dave Gagnon's mother?

11 A. Yes.

12 Q. And you know why we are here today I assume?

13 A. Yes.

14 Q. About the chain saw accident?

15 A. Yes.

16 Q. Okay. And I represent Paul Dulberg.

17 A. Okay.

18 MR. MAST: This is the discovery deposition of
19 Carol McGuire -- Carolyn McGuire.

20 THE WITNESS: It's Carolyn, right.

21 MR. MAST: It's what?

22 THE WITNESS: It is Carolyn. I know it was
23 written -- It's C-A-R-O-L-Y-N.

24 MR. MAST: Okay. Very good. Taken pursuant to

1 notice, in the course of the applicable rules.

2 I am just going to ask you some
3 questions about this incident. I am trying to find
4 out what you know, so if you don't know things, that's
5 fine, too, but I will just ask you some questions and,
6 please let me finish my question before you answer so
7 we don't talk over each other and if you don't
8 understand the question, let me know and I will try to
9 rephrase it for you, okay?

10 THE WITNESS: Okay.

11 BY MR. MAST:

12 Q. What's your date of birth?

13 A. November 26, 1946.

14 Q. Okay. That makes you, what, 65?

15 A. 66.

16 Q. 66. Okay. And what's your address?

17 A. 1016 West Elder, that's E-L-D-E-R, Avenue,
18 McHenry, Illinois, 60051.

19 Q. And who do you live there with?

20 A. My husband, William McGuire.

21 Q. Okay. How long have you been married?

22 A. Let's see. We got married in 1993.

23 Q. 20 years?

24 A. That would be 20 years I guess, yeah.

1 Q. Okay. And I understand that William is
2 David's stepfather, right?

3 A. Yes.

4 Q. And what's his father's name?

5 A. His real father's name was Alan, A-L-A-N, A.,
6 Gagnon, G-A-G-N-O-N.

7 Q. Were you married?

8 A. Yes. We were married.

9 Q. Did he pass?

10 A. Yes. He has passed on.

11 Q. When did he pass on?

12 A. He died when he was 50 so that was 16 years
13 ago so 1990 --

14 Q. So was there a divorce?

15 A. Oh, we were divorced. Yeah.

16 Q. Okay. Do you have any other children?

17 A. I have two daughters. I have a Diane Lutz,
18 L-U-T-Z. She is my oldest.

19 Q. Where does she live?

20 A. She lives at 4708 Wilmot Road, McHenry,
21 Illinois.

22 Q. Okay.

23 A. And then I have another daughter. Her name
24 is Donna Giovanni, G-I-O-V-A-N-N-I, and she lives on

1 Terrace in Johnsburg. I am trying to think of their
2 address. I can't think of it right offhand.

3 Q. Okay. And Dave is married?

4 A. David is married.

5 Q. How long has he been married?

6 A. It was four years.

7 Q. What's his wife's name?

8 A. Pam.

9 Q. Okay. So they live up in where?

10 A. They live -- Well, their mailing address is
11 Geneva, Wisconsin.

12 Q. Lake Geneva?

13 A. But they don't live in Lake Geneva. Oh --
14 No. It's Genoa. What am I saying. It's Genoa, Genoa,
15 Wisconsin.

16 Q. Right near Lake Geneva?

17 A. Right. It's close.

18 Q. Okay. And before being married to Pam four
19 years ago, did he live with you two?

20 A. No. They lived in that house where they live
21 now but they weren't married.

22 Q. How long did they live at that house?

23 A. At least 12 years.

24 Q. Oh, that long?

1 A. Yeah. Maybe 12 years.

2 Q. So 12 years ago was David living with you?

3 A. Yeah. He lived with me then.

4 Q. For how long?

5 A. His whole life until he left. He was there a
6 long time.

7 Q. How old is Dave?

8 A. Dave is 45 right now.

9 Q. Okay. So he lived with you over 30 years
10 then?

11 A. Probably. Yeah. Yeah.

12 Q. Right?

13 A. 30. Yes. Yep.

14 Q. What does Dave do for a living?

15 A. He does auto body work.

16 Q. Does he do it for somebody or out of his
17 house?

18 A. He is self-employed.

19 Q. Out of his house then?

20 A. Yeah. Right.

21 Q. Okay. You are aware of this chain saw
22 accident involving my client Paul Dulberg at your
23 house, right?

24 A. Correct.

1 Q. And I think it happened in June of 2011.
2 Does that make sense?

3 A. Yes.

4 Q. Okay. Do you know the day?

5 A. I believe it was the 28th or the 29th of
6 June. It was towards the end there.

7 Q. Okay. And the incident occurred I think --
8 and just generally now, we are going to go into the
9 details, but I think Paul was helping Dave with some
10 tree, cutting down some branches or something on your
11 property, right?

12 A. Correct.

13 Q. Okay. And Dave has already been deposed and
14 I don't have -- I am just trying to remember what he
15 said.

16 A. Uh-huh.

17 Q. But so I am going to ask you a little bit
18 about what your understanding was that he was doing
19 but as I recall, he said that he was taking a tree
20 down for you. Does that sound right?

21 A. Yeah. There was two trees in the back there.
22 They were evergreens.

23 Q. So there were two trees that you wanted him
24 to take down?

1 A. Yes. Because we were going to put a shed up
2 back there.

3 Q. Okay. So at some point I am assuming neither
4 you nor your husband are able to take a tree down with
5 a chain saw, right?

6 A. No.

7 Q. Is that right?

8 A. That's correct. We did not.

9 Q. Well, you aren't even able to do it because
10 you are just not -- you don't know how to do a chain
11 saw?

12 A. I am afraid of a chain saw.

13 Q. Probably your husband is the same?

14 A. Yes. He never used one either, yeah.

15 Q. So you knew that Dave had some experience
16 with chain saws?

17 A. Yes.

18 Q. Okay. If I were to go through what level of
19 experience he had in using chain saws before Paul's
20 accident, would you know?

21 A. He has used them many a times. If you go
22 from a one to a ten, I'd have to say a ten because he
23 has taken down trees at his house and so -- big trees.

24 Q. This is what I am asking, though --

1 A. Okay.

2 Q. Let me ask it this way: Before Paul's
3 accident, do you know how long Dave has had experience
4 using chain saws? A year, five years, ten years,
5 twenty years, do you have any idea?

6 A. Well, I'd have to say probably as long as he
7 was probably on his own property because he had cut
8 down trees then and anything prior to that, I really
9 don't remember.

10 Q. Okay. So you are saying for at least the
11 last 12 years?

12 A. At least, yes.

13 Q. Okay. So as soon as Dave began living up in
14 Genoa from that time until Paul's accident you knew he
15 was using chain saws?

16 A. Right.

17 Q. Before he began living up in Genoa 12 years
18 ago, what experience he had with chain saws you are
19 not sure; is that correct?

20 A. No, because like you said, he lived with me
21 for how many years and the only thing we ever cut down
22 on our property was the apple tree in the back.

23 Q. And did he do that?

24 A. Yeah. He did that.

1 Q. With a chain saw?

2 A. With a chain saw, so that was before this
3 accident happened the timeframe.

4 Q. So I want to get a summary of what you have
5 just said just so I understand.

6 A. Okay.

7 Q. So you are saying for the past 12 years while
8 Dave was living up in Genoa, you believed he has used
9 a chain saw regularly because that would be needed on
10 his property?

11 A. Uh-huh.

12 Q. Right?

13 A. Right.

14 Q. Okay. But 12 years ago, before 12 years ago
15 when he lived with you, you knew he took down a tree
16 but other than that, you are not aware of what
17 experience he had with chain saws; is that right?

18 A. No. I don't know if he had any.

19 Q. Is that correct what I just said?

20 A. That's correct. That's correct.

21 Q. I am going to say it again because the no and
22 the yeah messed it up.

23 A. Okay.

24 Q. Before 12 years ago --

1 A. All right.

2 Q. -- prior to that, other than Dave cutting
3 down a tree on your property while he was living with
4 you, you are not aware of any other experience he had
5 using a chain saw during -- before 12 years ago; is
6 that correct?

7 A. Correct.

8 Q. Okay. And how long did it take him to cut
9 that tree down more than 12 years ago on your
10 property?

11 A. Well, that wasn't even 12 years ago. That
12 tree was -- Okay. I'm sorry. The tree was actually
13 cut down before -- you know, not long before this
14 accident happened.

15 MR. BARCH: You got to listen to his questions
16 because he was asking you if the apple tree was cut
17 down more than 12 years ago so you got to listen to
18 his question.

19 MR. MAST: Let me say it again.

20 THE WITNESS: I was going to break in but then --
21 BY MR. MAST:

22 Q. I am happy to go through this to make sure
23 you understand it but if you don't understand it, you
24 got to let me know so we don't get it taken down

1 wrong, okay?

2 A. All right.

3 Q. So let's go back over that. All right. Over
4 the last 12 years while Dave was living up in Genoa
5 with his wife, you have known Dave to regularly use a
6 chain saw not only at his property but for you, right?
7 Is that correct?

8 A. Okay. Correct.

9 Q. Okay. Prior to 12 years ago when Dave was
10 living with you for the rest of his life pretty much,
11 have you ever known what experience he has in use of a
12 chain saw?

13 A. No.

14 Q. Okay. Do you know if he ever used a chain
15 saw more than 12 years ago?

16 A. I don't know.

17 Q. Okay. So the answer is the first time you
18 are aware that Dave has used a chain saw was after he
19 moved from your house and moved up to Genoa and lived
20 with his wife?

21 A. Right.

22 Q. His soon to be wife, right?

23 A. Right.

24 Q. And that was for the last 12 years, correct?

1 A. Correct.

2 Q. Before that you are not sure what experience
3 or use he had of a chain saw, fair enough?

4 A. Fair enough. Right.

5 Q. Okay. So I am assuming, and you can correct
6 me if I am wrong, did you ever see Dave use a chain
7 saw over at his house?

8 A. No. I would --

9 Q. You just knew he did?

10 A. Right. I seen a tree down.

11 Q. Did he have his own chain saw?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. You can't block your mouth because we have to
16 make sure you say it loud for us, all right?

17 A. Yes.

18 Q. I am assuming, and you can correct me if I am
19 wrong, the only time you saw Dave use a chain saw has
20 been on your property?

21 A. Yes.

22 Q. And that would have been within the last
23 12 years?

24 A. Yes.

1 Q. Okay. All right. So my next question
2 obviously is then before Paul's accident, how many
3 times have you known Dave to use a chain saw on your
4 property?

5 A. Twice.

6 Q. Okay. One was for the apple tree and the
7 other was for this accident, right?

8 A. No, and the other one was the tree in the
9 front we had taken down before this, too, within, you
10 know, a span of maybe a couple months and we had
11 somebody come and take down the whole tree but this was
12 like big pieces. It was a huge tree.

13 Q. Got it.

14 A. And so David and Paul were helping. They
15 were using Paul's chain saw.

16 Q. All right. I am going to get to that. It's
17 a little bit more wordy than I was asking. My
18 question was: How many times before Paul's accident
19 had Dave cut or used the chain saw on your property
20 and your answer is three?

21 A. Well, twice. The apple tree and the big tree
22 in the front.

23 Q. And he was also working on your property
24 before --

1 A. Right, and --

2 Q. We can't talk over each other, though. You
3 got to let me come to an end, okay, and then you can
4 answer. I will let you say whatever you want but you
5 got to let me come to an end.

6 Would it be fair to say that Paul has
7 used a chain saw on your property in the last 12 years
8 three times, three separate times?

9 A. Did you just say Paul?

10 Q. I'm sorry I did, didn't I?

11 MR. ACCARDO: Yes.

12 MS. MAST: See, she is listening to me.

13 BY MR. MAST:

14 Q. Is it fair to say over the last 12 years Dave
15 has used a chain saw on your property on three
16 separate occasions?

17 A. Correct. Yes.

18 Q. Okay. The one occasion was in conjunction
19 with the work he was doing before Paul's accident?

20 A. Yes.

21 Q. The other was the apple tree?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

1 Q. And the other was that tree in the front that
2 you had cut down and he had to cut it up?

3 A. Correct.

4 Q. Is that right?

5 A. Yes.

6 Q. All right. So now I want to try to get a
7 timeframe for those three occasions. I know when the
8 third occasion was because that's in June of 2011,
9 right? Right?

10 A. Right.

11 Q. Okay. So give me the timeframe of the other
12 two occasions if you can generally.

13 A. Well, let's see.

14 Q. Because you were talking about months before
15 and stuff.

16 A. Yeah. Probably months in between. I would
17 have to say this was -- I'd probably have to say maybe
18 the beginning of May was the real big tree in the front
19 that he did help at the end cut up.

20 Q. May of what year?

21 A. The same year, 2011.

22 Q. I need you to say it, though. I don't want
23 to say it.

24 A. Okay. May 2011.

1 Q. Okay.

2 A. And the apple tree, too, it was in 2011 and
3 it was probably shortly after that. Maybe the
4 beginning of June.

5 Q. Okay. Very good. Is the apple tree kind of
6 a smaller fruit tree that we are talking about then?

7 A. Yes. It was probably like that, the trunk,
8 yeah.

9 Q. I get it. Maybe about 6 or 8 inches?

10 A. Yeah. Diameter.

11 Q. Diameter.

12 A. Yes.

13 Q. So the first tree that Paul had to cut or the
14 first use of a chain saw on your property before
15 Paul's accident would have been that same year a month
16 before?

17 A. Uh-huh.

18 Q. Yes?

19 A. Correct. Correct.

20 Q. All right.

21 A. Yes.

22 Q. And that was where the big tree in the front
23 was taken down already, Paul didn't -- or Dave didn't
24 have to do that, right?

1 A. No.

2 Q. Is that right?

3 A. Correct. He did not cut it down.

4 Q. But you asked him -- you asked Dave to cut up
5 the trunk after the tree was already cut down; is that
6 right?

7 A. Can I elaborate on that and say something?

8 Q. Well, you can elaborate any time you want but
9 I'd first ask you to answer my question so that the
10 answer is shown on the record.

11 A. No. I did not ask him to cut it.

12 Q. Okay. What did you ask him to do?

13 A. But after the tree was removed, this big huge
14 tree by a tree company, there was a big huge stump out
15 there and what happens is they didn't take the wood
16 away because that would cost extra money and we knew
17 that Paul would probably want it for his fireplace
18 which he did and these things were huge so they were
19 cutting them into smaller pieces.

20 Q. Who is "they were"?

21 A. My son and Paul.

22 Q. So the stumps were left by the tree company
23 in May 2011 after they cut the tree down --

24 A. Uh-huh.

1 Q. -- and Paul and Dave you didn't ask them to
2 but they -- Paul wanted to keep some of that wood so
3 he asked Dave and they worked together to cut up those
4 stumps?

5 A. Right. To cut up the big rounds. You know,
6 they took away branches and stuff but they left big
7 chunks and that's what they cut up.

8 Q. You mean "they" took away, the tree company
9 took away the branches?

10 A. Right. The branches.

11 Q. But left the stumps?

12 A. Okay. The stump. Well, the stump, right.
13 The stump. Yeah. The stump is still there.

14 Q. Well, there is other little stumps that are
15 cut apart, right?

16 A. Yeah. They were trunks of the tree, you
17 know, yeah. Uh-huh.

18 Q. All right. So after the tree company cut the
19 tree down in May of 2011, there were sections of the
20 tree that were cut up by the tree company that were
21 left behind?

22 A. Correct.

23 Q. And Paul and Dave cut them up so Paul could
24 use it as firewood at his house?

1 A. Yes.

2 Q. Do you know if Paul was using a chain saw
3 during that time?

4 A. Well, it was his chain saw.

5 Q. But you know what I am asking, right?

6 A. Yeah. You know, I can't really remember if
7 they were both doing it or --

8 Q. All you have to say is I know or I don't
9 know.

10 A. I don't know. I really don't know.

11 Q. That's all you got to say and I will move on.

12 Had you ever seen -- Before Paul's
13 accident, had you ever seen Paul use a chain saw?

14 A. No.

15 Q. Okay. So whether he used it properly or
16 dangerously prior to Paul's accident you don't know if
17 Paul did or didn't?

18 A. No.

19 Q. You seen Dave use it on occasion before
20 Paul's accident as we already talked about, right?

21 A. Right.

22 Q. Did you believe he used it safely?

23 A. Yes.

24 Q. Ever see him use it unsafely, this chain saw?

1 A. No.

2 Q. Okay. Other than Paul and yourself, is there
3 anyone else Paul -- I'm sorry. Other than Paul, Dave
4 and yourself, is there anyone else that would have to
5 your knowledge seen Dave use a chain saw before Paul's
6 accident?

7 A. Well, I'd have to say no because I can't
8 remember actually.

9 Q. That's fine.

10 A. I seen him cut the tree.

11 Q. I'm not asking you to put your name in there.

12 A. Nobody else, no.

13 Q. Okay. How long did Paul and Dave work on
14 those tree sections cutting them up? How long did
15 that take? One day, more than a day?

16 A. Couple hours.

17 Q. Okay. So just one day then?

18 A. I believe.

19 Q. Okay. And was anything left after they cut
20 those stumps up?

21 A. No. Paul took it all.

22 Q. Okay. Did he pay you for it?

23 A. No. I gave it as a gift. He said he wanted
24 it.

1 Q. Very good. Okay. But who cut it up with the
2 chain saw you don't know, right?

3 A. I don't remember if they both did it or if
4 David just did.

5 Q. Okay. Do you know -- Again, I am just asking
6 what you know. If you don't know, you can just say I
7 don't know.

8 Do you know between Paul and Dave before
9 Paul's accident who was more experienced on the chain
10 saw?

11 A. No.

12 Q. Okay. Then after that big tree in the front
13 was cut up, there was the apple tree that was cut up
14 shortly after that, right?

15 A. Correct.

16 Q. Also in May or June of 2011, right?

17 A. Correct.

18 Q. And that is a 6 to 8-inch diameter and were
19 there any branches off the tree had to be cut up or
20 just the tree cut down?

21 A. No. There was branches.

22 Q. Okay. Do you know -- Did you see that being
23 cut down?

24 A. Yeah. David was out there trimming.

1 Q. Who cut the apple tree down?

2 A. David did.

3 Q. Did Paul -- Was Paul involved in the apple
4 tree being cut at all?

5 A. I believe no.

6 Q. Okay. So David did all that work?

7 A. Yes.

8 Q. How tall was that apple tree?

9 A. As tall as my house, 20 feet.

10 Q. And, again, that might have taken a couple
11 hours and that was over then?

12 A. Yes.

13 Q. And who took the wood from that tree?

14 A. I believe we put it in the back. We have it
15 piled up.

16 Q. Okay. So that was -- Those are two tree
17 projects that we just talked about in May or June
18 of 2011, right?

19 A. Correct. Yes.

20 Q. The third project is the two trees that you
21 said were in the backyard that you wanted to put a
22 shed back there so you wanted those trees cut down,
23 right?

24 A. Yes.

1 Q. And that was a project where you asked Dave
2 to do again, right?

3 A. Yes.

4 Q. You didn't ask Paul to do it, did you?

5 A. No.

6 Q. Okay. Sometime in June you told Dave, hey,
7 we need those two trees cut down in back, right?

8 A. Correct. Yes.

9 Q. And you asked him to do it, right?

10 A. Right.

11 Q. And he said he would do it for you?

12 A. Right.

13 Q. Okay. And the reason they had to be cut down
14 is you wanted to put a shed back there?

15 A. Right, and we didn't want to of course put a
16 shed up first and then take the trees down.

17 Q. Right. I understand. Okay. What was the
18 diameter of that -- of the two trees that were the
19 evergreens that were going to be taken down, if you
20 know?

21 A. Well, I'd have to say that they were probably
22 both at least 60 feet tall.

23 Q. Okay.

24 A. And the base of them was -- I don't know.

1 Q. A foot or so around?

2 A. Yeah. Maybe more.

3 Q. Well, if you measure -- Hold on.

4 A. Okay.

5 Q. If you measure it from one side to the other
6 side, is that about a foot wide?

7 A. No. It was more.

8 Q. More than a foot wide?

9 A. More than a foot wide.

10 Q. A foot and a half wide?

11 A. Yes. At least.

12 Q. Both of the trees were the same size?

13 A. About the same.

14 Q. Okay. Okay. And when Paul's accident
15 occurred, had both of the trees already been cut down?

16 A. David had gone up the trees by, you know, and
17 cut down --

18 Q. We are going to start there later, but I am
19 asking you right now by the time of Paul's accident,
20 were both of the evergreen trees already cut down or
21 was he going limb by limb?

22 A. David was cutting limb by limb but I believe
23 Paul came over when David needed him to help him.

24 Q. You are going too far away. I am just asking

1 you right now at the time of Paul's accident what the
2 condition of those two standing evergreens were. Were
3 they both still standing?

4 A. There was branches on the ground already.

5 Q. Were the trunks still standing?

6 A. Okay. Yes.

7 Q. Okay. That's what I am trying to find out.

8 A. Okay.

9 Q. Do you know the process Dave was choosing to
10 cut the trees down? Was he going first up the tree
11 and cutting the limbs down first and then he was going
12 to do the trunk or do you know?

13 A. He was going up the tree and cutting down the
14 branches.

15 Q. Okay. And then after the branches were cut
16 down, he would take the bases down and cut the trunks
17 down?

18 A. He didn't do that. We hired someone to take
19 the tree down the rest of it because they were so tall.

20 Q. I got you.

21 A. Okay.

22 Q. So you asked Dave then his job with regard to
23 these two evergreens in the backyard was just to take
24 the branches down?

1 A. Yes.

2 Q. Right?

3 A. Correct.

4 Q. And since the trunk was so big, you didn't
5 want Dave doing that because this was a big project.
6 You had a tree company come in to do that.

7 A. Right.

8 Q. Okay. And I am assuming there is countless
9 branches on both of these evergreens, right?

10 A. Right.

11 Q. Do you know the size of the bigger branches
12 that came off the tree?

13 A. Probably at least that big.

14 Q. Maybe about four inches from one side to the
15 other, yes?

16 MR. BARCH: I want to get -- I think we are
17 just -- I want to make sure that you are giving
18 estimates when you are or an accurate number. Just
19 clarify for when you are estimating or not. I don't
20 want you guessing.

21 BY MR. MAST:

22 Q. Now listen, I know you didn't go out with a
23 tape measure. What I'm asking is if you can estimate.
24 If you can't, if it's just a guess, then fine but hold

1 on. Let me ask the question.

2 My question is: If you put your fingers
3 on both sides of the heavier bigger branches on these
4 evergreens and you measured one finger to the other --

5 A. Right.

6 Q. -- what is the approximate distance you think
7 you'd have for the width of those branches, the bigger
8 ones?

9 A. I would say maybe three inches.

10 Q. Okay. All right. And those would have
11 been -- the bigger ones would have been at the bottom
12 or closer to the base of the tree, the thinner ones up
13 at the top, right?

14 A. Yes.

15 Q. Okay. Now, and, again, if you don't know,
16 that's fine. I keep saying that because I don't want
17 you to guess but I am trying to find out what you
18 know. So my question is: By the time of Paul's
19 accident, the day of Paul's accident, was that the
20 first day Dave was beginning work on those two trees?

21 A. It's been awhile and I really can't remember.
22 I think he did come by the one day to start it and
23 because there was all these branches piled up, then
24 Paul came over the next day and helped.

1 Q. Okay. And I think that might have been even
2 what he said so that sounds accurate.

3 A. Yeah, because he had to go someplace that
4 day.

5 Q. So Paul to your knowledge -- Strike that.

6 To your knowledge, Dave had worked out
7 at your house on these two evergreens the day before
8 Paul's injury cutting some branches down.

9 A. Right.

10 Q. And then Paul came over the next day to help?

11 A. Right.

12 Q. Is that your understanding?

13 A. Yes.

14 Q. Okay. Did Dave ask you if Paul could come
15 over and help or did he ever go through that with you
16 or did he just do that on his own?

17 A. He did it on his own.

18 Q. Were you going to pay Paul or not Paul. I
19 keep getting the names mixed up.

20 Were you going to pay Dave to do this
21 work for you?

22 A. He came over as a favor of my son to cut the
23 trees down and for his time I was going to give him
24 something for gas. He had to come up, you know, from

1 his house and that I was going pay him something.

2 Q. Was it predetermined what you were going to
3 pay him?

4 A. No. I didn't know. I just figured I'd give
5 him something.

6 Q. Like 20 bucks or something for gas?

7 A. Money to just --

8 Q. So you were going to pay him, how much, you
9 don't know and it wasn't going to be a large amount,
10 fair enough?

11 A. Right. Yes.

12 Q. So the first day that Dave started the work
13 the day before Paul's accident was cutting some
14 branches down from the two evergreens?

15 A. Yes.

16 Q. Was he starting on one evergreen first or was
17 he going to do both kind of in tandem together, if you
18 know?

19 A. Well, there was a big pile of branches. I
20 really can't remember if when Paul came in both were
21 already trimmed up or if he had just done one of the
22 bigger ones.

23 Q. So the answer is I don't know.

24 A. I don't know.

1 Q. Okay.

2 A. Right. I can't remember.

3 Q. All right. So the next question is: When
4 Paul came over the next day of this tree work that
5 Dave was doing, the status of the trees and how far up
6 one or more of them were cut you don't know; is that
7 correct?

8 A. Correct.

9 Q. Okay. But by the time Paul got there the day
10 of his accident, the second day in to doing the work,
11 some branches Dave had already cut the day earlier?

12 A. I can't remember. I don't know.

13 Q. Were there some branches on the ground
14 already?

15 A. They were on the ground but as he was cutting
16 and they were just falling down, okay?

17 Q. Right.

18 A. But I don't remember if he actually had
19 started to cut up branches himself that very first day
20 he was there, that it was just one big pile.

21 Q. Okay. And maybe I didn't word it properly
22 but my question was: By the time Paul arrived at your
23 house on the day of the accident, there were already
24 branches that had been cut down from the tree that

1 were on the ground?

2 A. Right.

3 Q. Were they piled up yet or were they all just
4 scattered on the ground?

5 A. I don't remember.

6 Q. Okay. And you don't know -- I think what you
7 were saying is you don't know if Dave had already
8 begun to cut up those branches that had been cut down
9 from the tree or whether they were still all together
10 in full lengths, right?

11 A. Yes.

12 Q. Okay. Do you know when Paul arrived at your
13 house the day of his accident?

14 A. I can't give you a precise time. It was
15 probably later morning, early afternoon.

16 Q. Other than late morning, early afternoon,
17 that's as specific as you can give me?

18 A. Right. I can't give you a time exactly.

19 Q. Okay. Late afternoon -- Late morning, early
20 afternoon seems to be around 12:00 or 1:00. Does that
21 sound about right?

22 A. Yeah.

23 Q. And did you greet or see Paul when he arrived
24 first at the house?

1 A. I saw his truck in front so I knew he was
2 over.

3 Q. But how long he had been there when you first
4 saw the truck you don't know; is that correct?

5 A. I don't remember, no.

6 Q. Is that correct then what I just said?

7 A. Correct. Uh-huh.

8 Q. Okay. All right. When you saw Paul's truck
9 out in front, that would have been the 12:00 to 1:00
10 kind of timeframe?

11 A. Right.

12 MR. BARCH: Well, I need to object. It's an
13 approximation. I don't want it to be looked at we are
14 using that as if that is the time so I object to form
15 of the question.

16 BY MR. MAST:

17 Q. I said earlier we are thinking somewhere
18 around 12:00 to 1:00 generally, fair enough?

19 A. Yes.

20 Q. And that's the first time you saw Paul's
21 truck in your drive, correct?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

1 Q. So whether Paul was there before you saw his
2 truck or how long you saw his truck, you don't know,
3 correct?

4 A. No.

5 Q. Is that correct?

6 A. Correct.

7 Q. What Paul was doing by the time you saw his
8 truck around 12:00 to 1:00 generally out at your
9 property, you don't know, correct? Is that correct?

10 A. Correct.

11 Q. Okay. You know he was helping Dave but
12 exactly what Paul's tasks were, do you know?

13 A. No.

14 Q. Did you at any time that day before Paul's
15 accident observe their work?

16 A. I went out there to give them some water
17 because it was a hot day but that was it.

18 Q. Did you go out there to give both Paul and
19 Dave water?

20 A. Yeah. I gave them water.

21 Q. A glass of water?

22 A. Probably a bottle, like this.

23 Q. Okay. And how many times did you do that
24 before Paul's accident?

1 A. Maybe once. I don't exactly -- Once. Say
2 once.

3 Q. Okay. Okay. And when you went out there,
4 how long were you out there?

5 A. Probably a few minutes. I talked to him.
6 Said hello and --

7 Q. Were Dave and Paul working at any point while
8 you were out there giving them water?

9 A. No. Not that I can remember, no.

10 Q. Okay. So what Paul's tasks were doing --
11 Strike that.

12 What Paul's tasks were during the work
13 and what Dave's tasks were during the work, you did
14 not observe; is that correct?

15 A. Correct.

16 Q. All right. So now I am going to summarize
17 this, and you can correct me if I am wrong, but before
18 Paul's accident, is it fair to say you only went out
19 of the house and saw what they were -- saw the
20 progress of the work once; is that correct?

21 A. Correct.

22 Q. And that was to deliver water to him for a
23 couple of minutes you were out there?

24 A. Correct.

1 Q. And during the time you were out there for a
2 couple minutes delivering water that one time, you did
3 not see either of them do any work that you can
4 recall, correct?

5 A. Correct.

6 Q. Okay. So as far as who was doing what work
7 before Paul's chain saw accident on your property that
8 day, you don't know who was doing what, correct?

9 A. No.

10 Q. Is that correct?

11 A. Correct.

12 Q. Okay. When you say no, that's why I have to
13 ask to make sure you understand my question. Is that
14 correct?

15 A. Correct.

16 Q. Okay. Do you know if Paul -- at any point
17 that day of his accident at your house, do you know if
18 Paul operated that chain saw that they were using to
19 trim these branches, do you know if he did?

20 A. No.

21 Q. Okay. You know that Dave was using the chain
22 saw, correct?

23 A. Yes.

24 Q. Okay. Other than the chain saw -- Well,

1 strike that.

2 The chain saw Dave was using to cut the
3 branches up at your house the day of Paul's accident,
4 was that the chain saw that was your chain saw?

5 A. Yes.

6 Q. Do you know if Paul had his own -- Strike
7 that.

8 Do you know if Dave had his own chain
9 saw?

10 A. Not with him.

11 Q. He had his own but it was at home, right?

12 A. Yes.

13 Q. Okay. Instead of him bringing his chain saw,
14 he used yours, right?

15 A. Yes.

16 Q. Is there a reason he decided to use yours as
17 opposed to bringing his own?

18 A. Ours was new.

19 Q. Is yours the one that's sitting here on the
20 table today?

21 A. Yes.

22 Q. Okay. At the time of Paul's accident at your
23 house with the chain saw, did you own more than one
24 chain saw?

1 A. We have an electric one in the basement but
2 we didn't use it.

3 Q. Okay. So at the time of Paul's accident --

4 A. Yes. I'm sorry.

5 Q. Once I start I am assuming you are done.
6 Okay. At the time of Paul's accident, you owned and
7 had available to use an electric chain saw and a gas
8 chain saw, correct?

9 A. Yes.

10 Q. The electric chain saw was in the basement
11 and was not being used for any of the work that Dave
12 and Paul were doing, correct?

13 A. Yes.

14 Q. All right. Why was that not being used?

15 A. It wasn't big enough and the chain on it was
16 dull.

17 Q. Okay. So Dave chose to use the gas one at
18 your house, correct?

19 A. Yes.

20 Q. That was by his choice. You didn't make him,
21 did you?

22 A. No. I didn't make him. Yeah. I know you
23 don't want me to elaborate. No. He chose to use that
24 one. It was new and it had never been used and the

1 blade was sharp.

2 Q. And, again, it's not that I don't want you to
3 elaborate. I want you to elaborate if you think it's
4 necessary. All I am saying is if you are not
5 answering the question, then I need to ask the
6 question again, okay? Okay. You can say whatever you
7 want to say, okay?

8 A. Okay.

9 Q. So the chain saw we have today here on the
10 table is the gas chain saw that Dave was using to cut
11 up the branches when Paul was injured, correct?

12 A. Yes.

13 Q. Okay. And this was the only gas saw you had
14 present and available and that you owned on your
15 property at the time of Paul's injury, correct?

16 A. Yes.

17 Q. Had Dave ever used this particular chain saw
18 before the day of Paul's accident?

19 A. I can't remember if he actually did use it to
20 cut up the apple tree or not. I don't remember.

21 Q. When you say it was new, you mean it was --
22 Wait. I just started my question.

23 When you say this chain saw was new as
24 of the day of Paul's accident, are you saying it had

1 never been used or you don't know if it had been used?

2 A. I don't remember. All I know is it was new
3 and we bought it in that year.

4 Q. You bought it in 2011?

5 A. Yes.

6 Q. Where did you buy it from?

7 A. It's on the manual inside the date where it
8 was purchased at and everything.

9 Q. I am asking you.

10 A. I don't remember but it's written on the
11 manual so if you want that information, I don't know.

12 Q. Listen, I can get it anyway. I am asking
13 you. If you don't know, you can just say.

14 A. I don't remember. It was just in 2011 we
15 purchased it.

16 Q. All right. And why did you purchase it?

17 A. Because we had trees that we knew needed to
18 be cut down.

19 Q. Okay. Did you purchase it, however, though,
20 for you or your husband to use or for somebody else to
21 use that might have to use on your property?

22 A. I guess we purchased to have a chain saw that
23 worked well and was new and had a sharp blade and I
24 didn't particularly buy it for, you know what I mean,

1 say, oh, I am buying a new chain saw here. We bought
2 it because we needed a chain saw.

3 Q. This is my question: I'm sorry if you think
4 my questions are funny but my question is this: Did
5 you purchase it expecting that you or your husband was
6 going to use it or that somebody else other than you
7 and your husband were going to use it?

8 A. Someone else.

9 Q. Okay. Not necessarily Dave but somebody else
10 other than you and your husband?

11 A. Right.

12 Q. Okay. And whether this chain saw, this gas
13 chain saw, that you purchased new in 2011 had been
14 used prior to cutting these two evergreens down in
15 June, 2011 you are not sure, correct?

16 A. I don't remember, no.

17 Q. Okay. If it had been used prior to the two
18 evergreens, that job in June of 2011, it had only been
19 used once before and that might have been the apple
20 tree job, correct?

21 A. Yes.

22 Q. Okay. Where these evergreens were and where
23 Dave and Paul were working, that would have been in
24 the backyard of your house?

1 A. Yes.

2 Q. If you -- What were you doing that day? I am
3 sure you were in the house, correct?

4 A. Right.

5 Q. You weren't working outside, were you?

6 A. I was outside for awhile playing with his dog
7 in the backyard but, I mean, I didn't stay out there
8 for any length of time and I was in the house most of
9 the time.

10 Q. Okay. So other than delivering water to Paul
11 and Dave before Paul's accident and maybe being out of
12 the house to run around with the dog for a few
13 minutes, everything else, all of your other activities
14 would have been inside the house that day, correct?

15 A. Yes. Yes.

16 Q. Okay. And if you ran the dog outside for a
17 few minutes, do you recall doing that before Paul's
18 injury or not?

19 A. Yeah.

20 Q. Do you know how long? It was just a few
21 minutes?

22 A. Yeah. Probably. I mean, just throw a ball
23 around and get a bone.

24 Q. And would that have been near where Dave and

1 Paul were working?

2 A. Yeah. I mean, my yard is not that big. Yes.
3 It's near.

4 Q. Okay. Do you recall having any observations
5 of what they were doing at the time you were outside
6 playing with the dog?

7 A. No. I don't remember. No. I would say no.

8 Q. Okay. Was that after you saw Paul's truck in
9 the drive that you said you first noticed Paul would
10 have been over by that time around 12:00 or 1:00,
11 somewhere around there?

12 A. Yes. It was after I was out there with the
13 dog.

14 Q. Okay. Do you know about what time -- How did
15 you first learn Paul was injured?

16 A. They came running in the house. He was
17 bleeding and I gave him a clean towel to wrap around
18 his arm and David drove him to the hospital in Paul's
19 truck.

20 Q. Okay.

21 A. It was fast. I mean, they didn't waste any
22 time getting to the hospital.

23 Q. Okay. We are going to go through all that
24 step by step. About what time was that that Paul ran

1 in the house?

2 A. I don't remember. It was maybe an hour,
3 maybe it was 2:00. I don't know, an hour later.

4 Q. An hour later meaning -- hold on -- an hour
5 after you first saw Paul's truck was in the drive
6 around 12:00 or 1:00 or approximately sometime around
7 there?

8 A. Right. They were working.

9 Q. So I am trying to get the chronology of this
10 and I understand it's not exact, I get that, but you
11 are saying again very generally 12:00 or 1:00 was when
12 you saw Paul's truck in the drive. An hour from
13 whenever that was later was approximately when Paul
14 ran in the house and said he was injured?

15 A. Right.

16 Q. And he was bleeding from what arm, if you
17 know?

18 A. I don't remember. I think it was his right
19 arm.

20 Q. Okay. You are not positive or are you sure
21 about that?

22 A. I am not positive.

23 Q. Okay. Hold on a minute. All right. So
24 during that approximate hour time that you knew Paul

1 and Dave were working on those -- on the trees, you
2 had been out there just a couple minutes outside
3 running with the dog and then delivering water during
4 that one hour time?

5 A. Yes.

6 Q. Okay. Were you doing anything in particular
7 inside the house?

8 A. What I usually do every day.

9 Q. What's that?

10 A. Dishes, wash clothes, clean up, whatever. I
11 don't remember, you know, but working inside the house,
12 yeah.

13 Q. Okay. What was your husband doing?

14 A. Probably watching television.

15 Q. Okay. Do you remember what day of the week
16 this was?

17 A. I think it was during the week.

18 Q. And I didn't ask you this before but are you
19 retired?

20 A. I am.

21 Q. Okay. Is your husband retired as well?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

1 Q. Okay. What kind of work did you do before
2 you retired?

3 A. I worked at Intermatic.

4 Q. What is that?

5 A. It was in Spring Grove. I worked in
6 production.

7 Q. What kind of company is that?

8 A. They made lighting sets, timers.

9 Q. Is that like factory type work?

10 A. It was factory, yeah.

11 Q. Okay. And what was your husband's kind of
12 job he did before he retired?

13 A. He was a carpenter.

14 Q. Okay. I didn't even ask this. William, how
15 old is William?

16 A. He was born in 1953. He will be 60 this
17 year.

18 Q. Okay. Is he in good health?

19 A. Huh?

20 Q. Is he in good health?

21 A. He is on Social Security disability.

22 Q. For what kind of disability?

23 A. For he got injured at work.

24 Q. What?

1 A. His back.

2 Q. Okay. So he is not able to be real active?

3 A. No. He can't lift up heavy things.

4 Q. That's what I am trying to understand.

5 A. Yeah.

6 Q. Okay. Are you healthy?

7 A. Yeah. I am all right. I am living. That's
8 about it.

9 Q. Do you have any disabilities?

10 A. No. I am not -- I am on Social Security
11 but -- Okay. No. I am not.

12 Q. All right. Let me just ask the question. Do
13 you have any physical disabilities whatsoever?

14 A. I am okay.

15 Q. Okay. All right. The work that you were
16 doing in the house, if you wanted to, would you have
17 been able to just look out the window and see the work
18 that Paul and Dave were doing or were they doing it at
19 a spot where you really couldn't see them?

20 A. I couldn't see them.

21 Q. So even in the house had you looked out a
22 certain part of the house, you wouldn't have been able
23 to visualize them outside working; is that correct?

24 A. Correct.

1 Q. Okay. So in order to see what they are
2 doing, you'd have to go outside and take a look?

3 A. Yes.

4 Q. Right?

5 A. Yes.

6 Q. And you didn't do that except for when you
7 went to deliver water. That's the only time you went
8 outside in the area where they were working, correct?

9 A. Right and played with the dog twice. That
10 was it.

11 Q. Right but playing with the dog you weren't
12 even paying attention to what you were doing, correct?

13 A. Yeah. I was paying attention to the dog.
14 No, I wasn't.

15 Q. Is that correct?

16 A. Yes. That's correct.

17 Q. So the only time you would have been in the
18 area to observe what they were doing is when you
19 delivered the water?

20 A. Right.

21 Q. And that's the time you remember telling me
22 you don't remember seeing what they were doing; is
23 that correct?

24 A. No. I don't remember.

1 Q. Is that correct?

2 A. Correct. Correct.

3 Q. All right. Did your husband ever go outside
4 while Dave and Paul were working?

5 A. I don't remember.

6 Q. Okay.

7 A. I don't remember.

8 Q. Did you ever talk to your husband about the
9 incident with Paul?

10 A. You mean about this whole thing?

11 Q. Yes.

12 A. Yes.

13 Q. Well, not --

14 A. Oh.

15 Q. Hold on. Not about what happened as a result
16 of the incident, meaning the lawsuit and things like
17 that. I am asking about did you ever talk to your
18 husband about how the incident may have occurred?

19 A. I probably -- Well, I wasn't there to see it
20 so I couldn't really tell him how I thought it
21 happened.

22 Q. Well, did you ask him if he saw it or --

23 A. He didn't see nothing, no.

24 Q. Okay. All right. When Paul came in, ran in

1 the house as you described from being injured --

2 A. Right.

3 Q. -- you offered him to wrap his arm?

4 A. Yes.

5 Q. And then so how long was he in the house
6 physically or did he just run in and run out with
7 Dave?

8 A. I have to say it might have been a minute. I
9 ran immediately, got a clean towel, put it on his arm
10 and they went to hospital.

11 Q. Did you visualize the injury? Did you see
12 it?

13 A. I could see the cut.

14 Q. That's what I am asking.

15 A. Yes. I could see the cut.

16 Q. How long was the cut?

17 A. Probably like this I would think.

18 Q. About six inches or so?

19 A. Yeah. He -- probably like that on the
20 forearm.

21 Q. Approximately six?

22 A. Yeah. Maybe on his forearm.

23 Q. And did you do anything to determine how deep
24 the cut was?

1 A. No. I got a towel and no, I didn't.

2 Q. Okay. All right. So although you know it's
3 about six inches long, you don't know how deep it was;
4 is that correct?

5 A. No. I don't know.

6 Q. Is that correct?

7 A. Correct.

8 Q. After wrapping it, and this is all within a
9 minute, Paul runs out with Dave and Dave takes him to
10 the hospital?

11 A. Correct.

12 Q. What hospital?

13 A. McHenry.

14 Q. NIMC?

15 A. Yes. NIMC.

16 Q. Do you know how long they were at the
17 hospital?

18 A. Well, I called -- I don't know. I don't
19 know. I called the hospital to see.

20 Q. What?

21 A. I called probably after they got there. What
22 does it take, 15 minutes to get there. Maybe a half
23 hour or something I called after.

24 Q. Just to find out the status?

1 A. Yeah. See how he was doing.

2 Q. Did you learn anything?

3 A. Yes.

4 Q. What did they tell you?

5 A. In the emergency room they told me that as
6 far as they could -- their knowledge, he didn't have
7 any damage done other than a superficial wound that
8 they would clean up and stitch up and give him
9 medication, you know, for pain and antibiotics for
10 infection.

11 Q. That's what the nurse people told you, the
12 people attending in the ER?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. Okay. And then did you -- Did Dave or Paul
17 have a cell phone with them when they went to the
18 hospital?

19 A. I can't recollect for sure.

20 Q. Does Dave have a cell phone?

21 A. Yes, he does.

22 Q. Did he have it at the time?

23 A. I don't remember.

24 Q. Okay. Did either of them -- Well, strike

1 that.

2 After Dave and Paul went to the hospital
3 right after the accident occurred, did you hear from
4 either of them while they were at the hospital?

5 A. No. When they came back, no.

6 Q. Okay. It wasn't until they came back from
7 the hospital?

8 A. To my house.

9 Q. Was that Dave or both Dave and Paul?

10 A. Both Dave and Paul were at my house
11 afterwards.

12 Q. Do you know how long that was after the time
13 they left to go to the hospital that they arrived back
14 at your house?

15 A. The length of time he was gone I am not quite
16 sure.

17 Q. What did you say?

18 A. I am not quite sure. Maybe an hour and a
19 half or something I mean by the time they did their job
20 and --

21 Q. Okay. All right. So it's your understanding
22 that Paul was injured, he runs into the house. Does
23 Dave run into the house, too?

24 A. He is right behind him.

1 Q. So they both run into the house, right? Yes?
2 Yes?

3 A. Yes.

4 Q. You wrap the arm, then they run back out.
5 They go to the hospital. They are at the hospital
6 approximately, and I know you didn't time it, but
7 approximately an hour and a half at the ER?

8 A. Uh-huh.

9 Q. And they come back to your house, correct?

10 A. Correct. Yes.

11 Q. And then Paul and Dave come into the house
12 again?

13 A. Yeah.

14 Q. Okay. And do you sit down and talk to him or
15 what happens?

16 A. Well, Paul needed medication to have refilled
17 and he didn't have any insurance and didn't have any
18 money on him so I gave him \$50 to go get the
19 prescriptions refilled.

20 Q. Okay.

21 A. Not knowing how much they would cost but you
22 know.

23 Q. So as I understand it, Paul comes back to
24 your house from the ER and says, hey, I need to refill

1 this prescription for pain medication and don't have
2 any money and you give him \$50?

3 A. Yes.

4 Q. Okay. So he asked -- Did he ask -- Hold on.
5 Did he -- It looks like you want to talk. Did he ask
6 you for the \$50 or did you just offer it to him?

7 A. I offered it to him. He didn't ask.

8 Q. How long was Paul in the house when he
9 returned from the ER until he left to get the
10 prescription filled?

11 A. They weren't there maybe a few minutes and
12 they went to the drug store.

13 Q. So Dave then took Paul in Paul's truck and
14 went to the drug store to fill the prescription?

15 A. Uh-huh.

16 Q. And then when Dave returned, did he return
17 alone or with Paul again?

18 A. I believe he took Paul home.

19 Q. Right.

20 A. And he could walk from Paul's house.

21 Q. Right. So it's your belief that Dave would
22 have walked from Paul's house back to home and that's
23 when he arrived home then?

24 A. Right.

1 Q. Was that within the hour?

2 A. I don't know how long he was at Paul's house
3 once he --

4 Q. Okay. But after Dave and Paul left in Paul's
5 truck to go fill the prescription, Dave then returned
6 next alone to the house, right?

7 A. Back to my house.

8 Q. Yes.

9 A. Yes, because he --

10 Q. So it was your feeling that he probably
11 dropped Paul after and left the truck at Paul's house?

12 A. Yeah. It was his truck. Paul's truck.

13 Q. I understand.

14 A. Okay.

15 Q. All right. Okay. Now, let's go back a
16 little bit and let me ask a couple follow-up
17 questions. When Paul ran into the house after the
18 accident, okay --

19 A. Uh-huh.

20 Q. -- with the injury, did he say anything about
21 how it happened?

22 A. There wasn't time. No.

23 Q. I understand there might not be time. I am
24 just asking if. If they didn't you can just say they

1 didn't.

2 A. No.

3 Q. Let me ask the question again because you
4 didn't answer it directly. When Paul arrived into the
5 house --

6 MR. BARCH: I know you are frustrated with the
7 way she answers questions but I think she is trying
8 her best.

9 MR. MAST: There is no question she is trying her
10 best.

11 BY MR. MAST:

12 Q. I'm not saying you are not trying your best.

13 A. I'm sorry. I know.

14 Q. You are doing fine actually. It's just
15 actually when you do answer it kind of indirectly, I
16 need to go back and I'm telling you why I need to go
17 back. You are doing fine. There is no problem with
18 what you are doing. I just need you to understand why
19 I am asking the question again.

20 So when Paul runs in the house after
21 being injured for the first time, I think you said
22 Dave followed, right?

23 A. Uh-huh.

24 Q. Yes?

1 A. Yes.

2 Q. You saw the injury, you wrapped it and then
3 they left immediately to go to the hospital, right?

4 A. Yes.

5 Q. During the time after the accident before
6 they left to go to the hospital, did Paul say anything
7 about how the accident occurred?

8 A. No.

9 Q. Did Dave say anything how the accident
10 occurred?

11 A. No.

12 Q. So by the time Paul and Dave left to the
13 hospital to the emergency room to treat Paul's injury,
14 you did not know how it happened other than you
15 assumed I am assuming you felt it was probably due to
16 the chain saw, right?

17 A. Yes.

18 Q. But you didn't know that?

19 A. No.

20 Q. And they never -- either of them never told
21 you how it happened, correct? Is that correct?

22 A. Correct.

23 Q. Okay. So they are at the hospital. You
24 don't talk to them now until they arrive back at your

1 house after the ER, right?

2 A. Correct.

3 Q. And they are only there for a couple of
4 minutes until they go fill the prescription for pain
5 medication, right?

6 A. Right.

7 Q. And while they are there for a couple of
8 minutes at your house before filling the pain
9 prescription, does Dave or Paul tell you anything more
10 about how the accident occurred?

11 A. No.

12 Q. Okay. I am assuming you put the dots
13 together and you felt it was because of the chain saw
14 but nobody told you that, fair enough?

15 A. Correct. Right.

16 Q. Is that correct?

17 A. Yes.

18 Q. Okay. So by the time Dave now returns home
19 alone after dropping Paul off, you have not yet heard
20 from Dave or Paul at that point how the accident
21 occurred; is that correct?

22 A. Well, Dave would have had to come back to my
23 house.

24 Q. That's where I am starting this question. By

1 the time he returns to your house, by that time you
2 still have not talked to either of them about how it
3 happened, correct?

4 A. No.

5 Q. Is that correct?

6 A. Correct.

7 Q. Okay. So Dave returns to your house alone
8 and we are probably talking now, what, in the evening
9 hours?

10 A. Yeah. Early evening.

11 Q. Maybe 4:00 to 5:00, somewhere in that general
12 area?

13 A. Right. Yes.

14 Q. Okay. 4:00 to 5:00 p.m., Dave arrives home
15 approximately and is there a conversation about what
16 happened?

17 A. I can't remember.

18 Q. Okay. Any time the rest of that day does
19 Dave make any statement about what happened?

20 A. Can I say something?

21 Q. Sure. If you want to.

22 A. In the aspect of all this thing happening so
23 fast, coming into the house, literally wrapping his arm
24 and rushing him to the hospital because he was really

1 concerned, when they came back to the house, they were
2 only there a few minutes also. I gave them the money.
3 When David came back obviously he drove Paul home
4 because it was his truck, he came back to my house
5 because that's where his car was, he was all upset and
6 everything. I don't remember that anything really was
7 said, you know, that Paul -- you know, little bit about
8 Paul, you know, as far as not how the accident
9 happened, how he was doing, you know, and that they got
10 the prescriptions and then he went home but he didn't
11 ever at that point at that time on that day, so.

12 Q. All you are saying then in summary is Dave
13 never mentioned how the accident happened?

14 A. Not on that day.

15 Q. Hold on. You got to let me finish my
16 question -- my statement. All you are saying is on
17 the day of Paul's accident at no time did you hear
18 from Dave or Paul for that matter how the accident
19 occurred?

20 A. No.

21 Q. Is that correct?

22 A. Correct.

23 Q. Okay. So even when Dave arrived back from
24 dropping Paul off, he stayed, what, for a few minutes?

1 A. Yeah. He didn't stay long. I can't really
2 remember, you know, but he probably did stay, you know.

3 Q. Stayed for awhile?

4 A. For a bit, yeah.

5 Q. Did he ever go back and finish the work up?

6 A. No. He went home.

7 Q. So by the time Dave left for now home the day
8 of Paul's accident, he still never told you what his
9 version of the accident was; is that correct?

10 A. No.

11 Q. Is that correct?

12 A. Correct.

13 Q. Did you see Dave the following day?

14 A. I can't remember but he must have come back
15 because the branches. You know, this is a year and a
16 half ago, no.

17 Q. Listen, Carolyn, you don't have to tell me
18 why. I have been doing this long enough. I know that
19 memories aren't the best sometimes so you don't need
20 to tell me why. My job, though, is to find out what
21 you know.

22 A. No, I don't.

23 Q. So I have to go through this with you, okay?
24 So let's just get through this. You are doing the

1 best you can. Let's just keep going.

2 Did you ever at any time after Paul's
3 accident at your house ever talk to Dave about how it
4 happened?

5 A. Yes. He did tell me.

6 Q. Okay. How many times have you talked to Dave
7 where you heard Dave's version of it? Just once or
8 more than once?

9 A. Maybe more than once.

10 Q. How many times?

11 A. I don't know. Twice.

12 Q. Okay. When was the first time after the
13 accident that you spoke to Dave about how it happened?
14 The next day, days later, how soon after the accident?

15 A. I don't remember.

16 Q. Do you know if it was within days of the
17 accident?

18 A. No. I don't remember.

19 Q. Okay. Was it within at least a month after
20 the accident?

21 A. Yeah. Probably.

22 Q. Okay. And was it at your house?

23 A. Or was it on the phone. I don't remember if
24 it was.

1 Q. So it was either in person or on the phone?

2 A. Right.

3 Q. Okay. Do you know if anybody else was a
4 party to that conversation meaning overheard that
5 conversation?

6 A. No. Just me.

7 Q. So Dave would have either called you or he
8 would have been at your house and he would have told
9 you this, right?

10 A. Right. Correct.

11 Q. Okay. What did he tell you?

12 A. What happened. That he was out there with
13 Paul, that Paul was helping him. David was using the
14 chain saw and Paul was holding the branches and they
15 had been cutting out there for awhile branches and
16 everything seemed to be okay and then the one branch
17 that when the accident happened that Paul was holding,
18 Paul had repositioned his hand at the split second and
19 moved his hand up on the branch because I guess it was
20 flexing and he just instantly and then David was in the
21 position, it only takes a second and that's how he
22 ended up injuring his arm because Paul had moved his
23 hand out of the position.

24 Q. So Dave blamed Paul for the accident then?

1 A. If he didn't move his hand -- They had been
2 cutting for an hour and everything was going fine until
3 this one incident happened, yeah.

4 Q. So the reason for the accident then according
5 to Dave was because Paul was moving his hand and he
6 didn't know he was moving his hand and he cut the hand
7 or the arm with the chain saw, correct?

8 A. Right. Right.

9 Q. And, again, and if you don't know, that's
10 fine but you don't know how long after the incident
11 occurred that Dave first told you this, do you?

12 A. Well, it wasn't that day because he was all
13 upset.

14 Q. I am just asking how long, if you know.

15 A. I don't know. Maybe a couple weeks. I don't
16 know or next week, the week after.

17 Q. Okay. And you said maybe a couple times Dave
18 had told you this, correct?

19 A. Uh-huh.

20 Q. Yes?

21 A. Yes.

22 Q. When was the next time?

23 A. Well, I don't know. He probably told -- I
24 don't know. Maybe before -- Well, I think it was

1 probably before he got the letter from you in December,
2 you know. Up to that point, you know, he just thought
3 that things would not end up this way not knowing, you
4 know, and then when he found out the way he knew it
5 happened and he told me and he knew what Paul had said
6 the way it happened, he was kind of upset.

7 Q. Okay. But my question was: When is the next
8 time you spoke to him? Hold on. You got to let me --

9 A. I am thinking.

10 Q. My question is: When is the next time after
11 this first time of one or two weeks after the accident
12 when is the next time you heard Dave express his
13 version of the accident?

14 A. Probably a couple months went by.

15 Q. Okay. And that was after he heard Paul's
16 version of the incident or not?

17 A. I think so. Yeah.

18 Q. And Dave got mad after he heard Paul's
19 version of the incident?

20 A. He was kind of upset.

21 Q. Did he tell you why he was upset?

22 A. For what's written -- because he figured if
23 Paul hadn't moved his arm forward to reposition on the
24 branch David would have never cut him.

1 Q. Is that what Dave said to you?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes.

5 Q. See, this is what I am trying to find out. I
6 am trying to find out everything that Dave said
7 describing the incident and his feelings versus Paul's
8 version of the incident. That's what I am trying to
9 find out.

10 A. Right.

11 Q. I don't want to know your version. I want to
12 know what Dave said.

13 A. No.

14 Q. So Dave told you he is upset because he heard
15 of Paul's version which is different from his version
16 of the incident, correct?

17 A. Uh-huh.

18 Q. Is that correct?

19 A. Yes.

20 Q. Anything else that Dave discussed with you
21 regarding how the incident occurred or his feelings
22 regarding how Paul described the incident?

23 A. No. I mean, no. He just -- What he had said
24 what his version was and knowing what Paul had said.

1 Q. Do you know what Paul's version is? Do you?

2 A. Well, I don't know if I put my foot in my
3 mouth now because --

4 MR. BARCH: I think he is asking you what you
5 have heard about Paul's version.

6 THE WITNESS: The version that I know is that
7 Paul is saying that he was holding the branch and
8 threw it down on the ground, that David had revved up
9 the chain saw and came towards him to cut the branch
10 that he didn't even have. He had already thrown the
11 branch down on the ground. What would that make it
12 seem like, David didn't even see his arm was there and
13 that the branch --

14 BY MR. MAST:

15 Q. Carolyn, I don't want to get into an argument
16 about what happened, okay. That's not my purpose
17 here. What I am trying to find out is who told you
18 what, when and how. Okay. That's what I am trying to
19 find out. What you think makes sense or what I think
20 makes sense is not the topic today, okay.

21 The version that you just described,
22 whose version is that?

23 A. That's what Paul had said in his -- one of
24 his -- Paul had said.

1 Q. In what? When did he tell you?

2 A. No. To your -- you, to the lawyer or in some
3 kind of --

4 Q. How do you know that?

5 A. Because my lawyer told me.

6 Q. Okay. All right. Sorry.

7 MR. BARCH: Here's the thing, let me just say
8 this, Carolyn, if he is asking you questions which
9 require you to relate what I have told you --

10 THE WITNESS: Yes.

11 MR. BARCH: -- don't give that information. He
12 is asking you about other people. Not about what you
13 and I have talked about.

14 BY MR. MAST:

15 Q. All right. So let's go back. Okay. What I
16 want to try to find out is this: I want to know
17 everything Dave told you and everything Paul told you
18 and everything anybody else might have told you other
19 than your attorneys, okay? That's what I am trying to
20 find out, three things. We have gone pretty far with
21 regard to Dave so I am going to follow that up by
22 saying: Have you told me everything that Dave has
23 told you concerning the accident or Paul's injuries?

24 A. Yes.

1 Q. Is there anything else you want to add to
2 that other than what you have already told me?

3 A. No.

4 Q. Regarding Dave now. Is that it?

5 A. Yes.

6 Q. Okay. So Dave has never told you more about
7 what he thinks as far as Paul's injuries, nothing
8 more? You have never told me anything about that.

9 A. You mean if David knew the extent of Paul's
10 injuries?

11 Q. Yes. Has he discussed that with you at all?

12 A. He only knew, too, the day of when it
13 happened what I had told him what I learned from the --

14 Q. ER?

15 A. -- from the hospital, from the ER.

16 Q. That's all Dave knows?

17 A. That's all he knew until all this started to
18 unroll, right.

19 Q. Right. So you have told me now everything
20 that Dave has ever told you regarding the incident and
21 how it occurred and medically how Paul was injured
22 from it, correct?

23 A. Yes.

24 Q. Okay. And there are only two times that Dave

1 really discussed the specifics of how it happened and
2 both times he told you that Paul was shifting his
3 hands when he was lifting this chain saw up and caught
4 Paul on the arm, correct?

5 A. Correct.

6 Q. Okay. Dave never accepted responsibility for
7 this accident then in your view, correct? He did not
8 believe he was responsible for it; is that correct?

9 A. Correct.

10 Q. Okay. And he never accepted responsibility
11 for it to you as far as you knew, correct?

12 A. Correct.

13 Q. Okay. How many times now have you talked to
14 Paul about the incident after his accident?

15 A. I have never talked to Paul. The only time I
16 talked to Paul was after it happened a few days and I
17 went by to see how he was feeling and when he was going
18 to get his stitches out and I maybe talked to him on
19 the phone maybe once.

20 Q. All right. Well, see, this is my confusion.
21 I asked you how many times you talked to Paul since
22 the accident about this and you said I never had and
23 you mentioned two times.

24 A. Well --

1 Q. Stop. Stop. So we got to go through those,
2 okay? So it's your testimony that you only spoke to
3 Paul twice after this accident?

4 A. Yes. Twice.

5 Q. Right?

6 A. Right.

7 Q. Not any other times than two times, right?

8 A. Just twice.

9 Q. Okay. Before the accident, let's say a year
10 before the accident, how many times did you talk to
11 Paul?

12 A. I don't know. A few times.

13 Q. Okay. So talking to him twice after the
14 accident, is that within a year of the accident, after
15 the accident?

16 A. The time span which I did talk to him was
17 probably when it happened into the late part of the
18 year. Well, no. It was probably when I first talked
19 to him --

20 Q. You are not listening to the question.

21 A. I know. I am going off the edge again.

22 MR. BARCH: He is talking about a different
23 timeframe than you are.
24

1 BY MR. MAST:

2 Q. From the day of Paul's accident during the
3 time that you talked to him these two occasions about
4 the accident, how much time elapsed? Just --

5 A. A couple weeks only.

6 Q. Okay. So the two times -- the two times you
7 talked to Paul about his accident with the chain saw
8 was within a couple of weeks of his accident, yes?

9 A. Right. Correct.

10 Q. And that would have been sometime still in
11 July of 2011, right?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. And you have not talked to Paul since July,
16 2011 until today, correct?

17 A. I did in September.

18 Q. So there is another time?

19 A. He came by my house.

20 Q. September of what?

21 A. 2011, that year.

22 Q. So there is three times you talked to Paul?

23 A. Uh-huh.

24 Q. Yes?

1 A. Yes.

2 Q. So since September of 2011, have you talked
3 to Paul until today?

4 A. No.

5 Q. From the time of Paul's accident until today
6 you have talked to him only three times?

7 A. Correct. Yes.

8 Q. Have they all been in person?

9 A. Two are in person.

10 Q. One was on the phone?

11 A. One was on the phone that I remember.

12 Q. Okay. All right. So let's start with the
13 first time you talked to Paul after his accident about
14 the incident, okay?

15 A. Uh-huh.

16 Q. You say that was a couple weeks later?

17 A. It was probably -- It's before he had
18 stitches out even so it was within a week.

19 Q. Okay.

20 A. When I had seen him in person.

21 Q. And was it at your house or where?

22 A. At his house.

23 Q. You visited him?

24 A. Uh-huh.

1 Q. Yes?

2 A. Yes.

3 Q. And how long were you at his house?

4 A. I don't know.

5 Q. Couple minutes?

6 A. Maybe. I don't know. I was visiting maybe
7 an hour.

8 Q. Okay. And how much time did you spend of
9 that hour talking about the incident?

10 A. I only asked him how he was doing.

11 Q. Okay. And what did he say?

12 A. He says that he seems he is doing okay but of
13 course it hurts and I says, well, I can understand
14 that, you know, and that was about it. He didn't go on
15 and elaborate anything.

16 Q. Okay. At any time during that first visit
17 with him, within a week of the incident, was it ever
18 discussed how the accident occurred?

19 A. No.

20 Q. Okay. And other than him saying, okay, it
21 still hurts, did you ever talk more about his injury?

22 A. No. Other than that one time I called him on
23 the phone.

24 Q. No. No. I am just talking about --

1 A. No. No.

2 Q. You met with him --

3 A. No.

4 Q. When you met with him a week after the
5 accident and visited for about an hour at his house,
6 the only thing you talked about regarding his injury
7 was, okay, it still hurts. That's all he said?

8 A. Right. Correct.

9 Q. So the rest of that visit was unrelated to
10 this incident or his injury, correct?

11 A. Correct.

12 Q. It was just being friendly talk?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. Okay. Who was present during that visit?

17 A. His mother.

18 Q. Was she -- Was she able to hear the words
19 that were exchanged between you two?

20 A. She was sitting right next to me.

21 Q. Okay. Anybody else present?

22 A. I don't remember. I think she was just home.

23 Q. Did Paul ever suggest at any time since his
24 accident that he was wanting you or Dave or anybody to

1 say something in order so that he can get a lot of
2 money in the case? Did he ever say anything like that
3 to you?

4 A. To me, no.

5 Q. Did he say it to somebody else?

6 A. You mean so he could -- Well, you can say
7 it's hearsay again. How can I prove it? Paul had said
8 something to David.

9 Q. And Dave told you that?

10 A. David told me that.

11 Q. So I understand that. I know that already
12 but you didn't hear Paul say that. You heard Dave
13 tell you that he said that?

14 A. Right.

15 Q. You knew they were -- Hold on. You are
16 not -- you did not -- Let me say the question again.
17 You have not heard Paul at any time say anything like
18 that, correct?

19 A. Correct.

20 Q. You have not heard Paul ever say since his
21 accident that he wanted to try and make money, he
22 wanted to try to stay off of work, he wanted to try to
23 get people to help him get the money or anything like
24 that? You never heard any of those conversations from

1 Paul, have you?

2 A. No.

3 Q. Okay. You heard them indirectly from Dave to
4 you, correct?

5 A. Right.

6 Q. Okay. So you are not a witness to what
7 anything Paul said regarding those issues of trying to
8 make money or trying to not have to work the rest of
9 his life or any of those kind of things, you never
10 heard any of those things from Paul, did you?

11 A. No.

12 Q. Okay. And the only person you have heard
13 that from is from Dave, correct?

14 A. Right.

15 Q. All right. Wherein Dave said, hey, Paul told
16 me he wants me to say this to try to get him more
17 money, something like that?

18 A. Uh-huh.

19 Q. Right?

20 A. Right.

21 Q. Did you ever report that to anybody that Paul
22 said that?

23 A. I don't know if I mentioned it to Ron or not.

24 Q. Your attorney?

1 A. Yeah. My attorney.

2 Q. Okay. Did you ever mention it to anybody
3 else?

4 A. Well, if I mentioned it to my husband, he
5 probably won't remember anything.

6 Q. Okay. Anybody else?

7 A. No.

8 Q. Okay. All right. So far we talked about
9 that one visit, the first visit, with Paul after the
10 accident about a week later, you had an hour over at
11 his house and there wasn't a lot discussed about the
12 accident, correct?

13 A. No.

14 Q. Correct?

15 A. Correct.

16 Q. Okay. The second time you met with him it
17 was again in person?

18 A. Yes. It was in the end of September of 2011.

19 Q. No. I thought you met with him two times,
20 though.

21 A. Yes. When he -- you wrote down three times
22 in that year. It was three times.

23 Q. We are on the second time. September was the
24 third time.

1 A. Okay. It was on the phone.

2 Q. Let's go back because now we are all unclear
3 again because of that.

4 The first time you spoke to Paul after
5 the accident was when you visited in his home about a
6 week later for that hour for that visit, right?

7 A. Correct.

8 Q. The second time was on the phone call?

9 A. Yes.

10 Q. How long after that first visit with him was
11 that phone call?

12 A. Not long. I can't say.

13 Q. A day, a week, a month, a year?

14 A. I don't know. Maybe two weeks.

15 Q. Okay. And that was a telephone call did you
16 make to him or he made to you?

17 A. I called him.

18 Q. Why did you call him?

19 A. Just to see how he was doing. How -- He had
20 his stitches out, you know.

21 Q. So what was said?

22 A. Well, he says the stitches are out and he
23 seems he is doing okay and left it at that.

24 Q. Did he say he is recovered?

1 A. No. I can't -- No. No.

2 Q. Did you know if he still had problems with
3 the injury or not or you don't know?

4 A. I don't know.

5 Q. Okay. How long was that conversation on the
6 phone?

7 A. Probably a few minutes only.

8 Q. Did Paul ever discuss the specifics of how
9 his chain saw accident occurred?

10 A. No. Not to me, no.

11 Q. Did he tell you what he thinks Dave did wrong
12 in that accident or causing his injury or anything
13 like that?

14 A. No.

15 Q. Did he ever suggest that he wants to try to
16 make money out of this case in that conversation?

17 A. No.

18 Q. Or any other conversation did he ever suggest
19 that?

20 A. No.

21 Q. Okay. Did he ever ask you for your insurance
22 information?

23 A. I offered it to him.

24 Q. When?

1 A. Right after the accident happened.

2 Q. You mean while he was still on the way to the
3 ER or that week later?

4 A. No. After the fact. Yeah. Maybe after a
5 week. After a week later.

6 Q. I am trying to find out when.

7 A. A week later.

8 Q. When you went to his house?

9 A. Possibly. I gave him -- yes.

10 Q. Wait.

11 A. I can't remember.

12 Q. Hold on. We are talking about the times you
13 spoke to Paul and there was only three times. It's
14 got to be the first time, the second time or the third
15 time that you offered your insurance information to
16 him.

17 A. It must have been when I went over to the
18 house then because I remember writing stuff down.

19 Q. The first time?

20 A. The first time.

21 Q. Okay. So during that hour conversation with
22 Paul at his house, you said, here, I will give you my
23 insurance information, right?

24 A. Right.

1 Q. Did he thank you for it?

2 A. I guess. Yeah.

3 Q. Was he polite?

4 A. He was polite, yes.

5 Q. Was he trying to make more out of the case
6 than you thought?

7 A. No.

8 Q. Did Paul ever make you feel uncomfortable in
9 the way he described his accident or what his injuries
10 were?

11 MR. BARCH: I object. She said he didn't
12 describe it to her.

13 BY MR. MAST:

14 Q. Well, in any way that he described his
15 injuries or the accident did he ever make you feel
16 uncomfortable like he was trying to make more out of
17 it than he should?

18 A. No.

19 Q. Okay. So we talked about your first visit
20 with him at his house for an hour. We talked two
21 weeks later the telephone call for a few minutes and
22 all he said was he is doing okay and that was about
23 all that was discussed, right?

24 A. Right.

1 Q. No specifics regarding the accident?

2 A. Okay.

3 Q. Then the third and final conversation you had
4 with Paul was in person, correct?

5 A. Yes.

6 Q. September, 2011?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. And where was that?

11 A. At my house.

12 Q. So he came over to your house?

13 A. Yes.

14 Q. Was he alone?

15 A. Yes.

16 Q. Was anyone else other than you and him
17 present?

18 A. Just me and him.

19 Q. Okay. And how long was that conversation?

20 A. Well, he wasn't there too long. He was
21 taking a tiller off the back of his truck by himself
22 that's two and a half feet off the ground.

23 Q. Off the back like a pickup truck?

24 A. Yeah. The vehicle that Mike came in here. I

1 don't know what you would call it. It's like a
2 suburban and he had a flatbed on the back of it
3 attached.

4 Q. He had a trailer on it?

5 A. Yes. A flatbed.

6 Q. And the tiller was it one of those garden
7 tillers?

8 A. No. It was a big tiller.

9 Q. Well --

10 A. It's not a Mantis. A Mantis is a little tiny
11 thing. This is a full size tiller, probably about this
12 wide.

13 Q. Three feet wide?

14 A. Yes.

15 Q. Does it have wheels?

16 A. Wheels? You mean --

17 Q. Does it have wheels to roll it on?

18 A. Yeah. When you have to till, you got to have
19 wheels. Okay. It got wheels on it. It's a tiller,
20 yeah.

21 Q. All right. Do you know how much it weighs?

22 A. I asked him if he needed help.

23 Q. That's not what my question was.

24 A. No. I don't know. It probably weighed,

1 what, 200 pounds at least.

2 Q. Okay. Had you ever lifted it or moved it
3 around yourself?

4 A. No.

5 Q. Who was going to use it?

6 A. Paul used it at his house to till his garden.

7 Q. Who was going to use it at your house?

8 A. He brought it back to my house so David could
9 pick it up and bring it back to his house.

10 Q. So Dave was going to use it?

11 A. It was his.

12 Q. It was Dave's tiller?

13 A. It's Dave's tiller.

14 Q. So apparently Dave had let Paul use it before
15 the accident, right?

16 A. No. It was after the accident. He had a big
17 garden. It was time to till the garden --

18 Q. You are not letting me take you through this
19 because I got to ask the question before you are
20 answering me otherwise your answer doesn't mean
21 anything.

22 A. I know. Okay.

23 Q. Do you know when Dave first lent this tiller
24 to Paul?

1 A. Probably the beginning of September I'd say.

2 Q. Do you know that for sure?

3 A. I am only basing it on the fact that the
4 garden was done and he wanted to till up his garden.

5 Q. Who is "he"?

6 A. Paul wanted to till up his garden and he
7 asked David if he could use his big tiller.

8 Q. Do you know when Dave asked or when Paul
9 asked Dave to use the big tiller?

10 A. Beginning of September maybe.

11 Q. Why? Were you there when Paul asked Dave
12 that? How do you know that?

13 A. He brought the tiller back from his house the
14 day --

15 Q. Paul did?

16 A. -- that David had borrowed him.

17 Q. I need names so I know who you are talking
18 about.

19 A. David's tiller he borrowed to Paul to till up
20 his garden.

21 Q. This is my question: Do you know when Paul
22 borrowed the tiller?

23 A. In the beginning of September.

24 Q. How do you know that?

1 A. Because David said that Paul had the tiller.

2 Q. Okay. That's what I am trying to find out.

3 A. Okay. All right.

4 Q. So your -- the basis for what -- your
5 thinking that Paul used the tiller beginning in
6 September of 2011 was what Dave told you, right? You
7 didn't have direct knowledge of that. You just knew
8 it from Dave, right?

9 A. Right. I just knew that Paul had it. Right.

10 Q. Okay.

11 A. Yes.

12 MR. BARCH: Just, Carolyn, you don't have to feel
13 bad if you don't know when he got it or how he got it.
14 It's okay.

15 MR. MAST: It's not a big deal. I am just trying
16 to find out.

17 THE WITNESS: Okay. So probably. Yeah.

18 MR. MAST: I am just trying to find information
19 out.

20 BY MR. MAST:

21 Q. Okay. All right. So what you are saying is
22 sometime in September Dave said Paul is borrowing my
23 tiller, is that what you are saying?

24 A. Right.

1 Q. Okay. When Paul began to use it, you don't
2 know, right?

3 A. No.

4 Q. You don't know who was using it over at
5 Paul's house?

6 A. No.

7 Q. You never saw Paul use it, did you?

8 A. No. No.

9 Q. So who used the tiller over at Paul's house
10 you 'don't know?

11 A. No, I don't.

12 Q. Okay. But Paul brought it back to your house
13 to return to Dave, correct?

14 A. Yes.

15 Q. And that was in September, 2011?

16 A. Correct.

17 Q. Okay. And how long was Paul at your house
18 that day?

19 A. I don't know. Not long. A few minutes
20 maybe.

21 Q. What's that mean, a few minutes?

22 A. Okay. 15 minutes he was there.

23 Q. Was he inside your house or just outside?

24 A. He was outside.

1 Q. During the 15 minutes he was at your house,
2 were you with him that entire time?

3 A. Yes.

4 Q. Was anybody with him at that time?

5 A. No.

6 Q. So just you and him again?

7 A. Right.

8 Q. Okay. And that visit was meant only for Paul
9 to drop off the tiller?

10 A. Correct.

11 Q. Okay. Did you and Paul engage in any
12 conversation about the chain saw accident, how it
13 occurred or his injuries as a result of that?

14 A. No.

15 Q. Okay. So the only conversation that you had
16 with him pertained to returning the tiller?

17 A. Yes.

18 Q. Okay. And what was said then regarding that
19 issue?

20 A. I just said that tiller looks awfully big and
21 it's pretty heavy. I says would you like me to help
22 you take it down and my husband I believe was not home
23 at the time so I was there and he says no. It's okay.
24 I can do it.

1 Q. Okay. Were you there when he took it down?

2 A. Yes.

3 Q. Okay. How high was the trailer off the
4 ground? About a foot and a half, foot maybe?

5 A. About two feet maybe.

6 Q. About two feet?

7 A. Yeah.

8 Q. Okay. And is there a ramp off of the trailer
9 or does he have to roll it off or how does he get it
10 off?

11 A. There was no ramp.

12 Q. Okay.

13 A. It was just the flatbed, you know.

14 Q. So how did he get it off then?

15 A. He picked it up.

16 Q. Okay. He picked the whole tiller up with
17 both arms?

18 A. He picked it up, yeah. How else do you pick
19 up 200 some --

20 Q. Listen, Carolyn, I am just trying to find
21 out. I am not going to assume anything so don't get
22 upset with this but I have to go through the steps of
23 what happened, okay?

24 A. Uh-huh.

1 Q. You watched him pick up the tiller?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes.

5 Q. I need a yes or no, okay?

6 A. Yes.

7 Q. Did you watch him pick it up with both arms?

8 A. Yes.

9 Q. Okay. Did he wrap his arms around the engine
10 and the wheels or just around the top handlebars?

11 A. Like that. Around the engine and the top so
12 he could get it down.

13 Q. Okay. Was the engine of the tiller up by the
14 edge, the rear edge of the trailer when he picked it
15 up or was it in the middle of the trailer? Where was
16 it?

17 A. It was towards the back.

18 Q. Did he pick it up from standing on the ground
19 or from standing on the trailer?

20 A. I think he was on the ground and because it
21 was towards the edge so he was on the ground where he
22 could, you know, grab on to it.

23 Q. So as I understand from you, the tiller is at
24 the end of or the back of the trailer which is an open

1 ended trailer, right?

2 A. Correct.

3 Q. Paul takes his arms and wraps it around from
4 standing on the ground?

5 A. Right.

6 Q. Which is a foot or two feet lower than that?

7 A. Right.

8 Q. Correct?

9 A. Right.

10 Q. Wraps his arms around the engine and the
11 wheels, that whole compartment, picks it --

12 MR. BARCH: I think she said he grabbed the
13 handle and then the engine at the same time.

14 MR. MAST: Did he?

15 MR. BARCH: She reached like that.

16 THE WITNESS: He put his hand here and here so
17 he'd have leverage to put the thing down on the
18 ground.

19 BY MR. MAST:

20 Q. Here and here, I don't know what that means.
21 Hold on. I need to follow this up with a question,
22 okay?

23 Where was Paul's left hand or arm with
24 regard to the tiller when he picked it up? Was it on

1 the engine part of it or was it on the handle or
2 where?

3 A. I'd have to -- I don't know.

4 Q. Or don't you know?

5 A. I don't know. I know he had to use both
6 hands to take it down.

7 Q. Okay. Where was his right arm when he picked
8 up the tiller, on what part of the tiller?

9 A. Towards the heavier part.

10 Q. His right arm.

11 A. Where the engine is at, you know.

12 Q. Okay. You don't know where his left arm was
13 but his right arm was by the heavier part of the
14 engine?

15 A. Yes because, let's see, if I was standing in
16 my driveway, yeah, and his back was that way, his right
17 arm was here and the other arm would have been up.

18 Q. Up where, on what?

19 A. Well, towards the handle part of the tiller.
20 It was like a bar.

21 Q. When you were looking at this, were you
22 watching him do it?

23 A. Yes.

24 Q. What part of his body was facing you when he

1 was doing this?

2 A. His face was facing me. He was facing -- I
3 was looking like I am looking at you.

4 Q. Right.

5 A. Okay. And --

6 Q. So let me stop you. So he had his pickup
7 truck with him, right?

8 A. Uh-huh.

9 Q. Yes? I need a yes or a no.

10 A. Yes.

11 Q. The trailer was on the back of the pickup
12 truck and he pulled into your driveway, right?

13 A. Right.

14 Q. And you are in the front of the house looking
15 toward him, right?

16 A. Yes.

17 Q. So if he is at the back of the trailer, you
18 are saying he'd be facing you, right?

19 A. Right.

20 Q. Okay. And then he'd have his left arm up
21 somewhere maybe by the handles and his right arm
22 surrounded the engine of the tiller, right?

23 A. Right.

24 Q. And then did he just pick it up?

1 A. Yeah. He picked it up and put it on the
2 ground.

3 Q. Okay. How high off of the bottom of the open
4 trailer did he pick the tiller up?

5 A. I am not quite sure.

6 Q. Okay. Then did he just shift himself around
7 and let it straight down after he moved over from
8 above the trailer?

9 A. No. He didn't -- He lifted it off and put it
10 on the ground.

11 Q. That's what I am saying.

12 A. Yeah.

13 Q. When he lifted it up, did he back up ten
14 feet? Did he just turn around and twist himself and
15 drop it next to him? How did he drop it to the
16 ground?

17 A. I don't remember the exact procedure.

18 Q. Okay. Okay. But after he picked it up and
19 moved away from the trailer, he put it back on the
20 ground then, right?

21 A. Right.

22 Q. Okay. And then what did he do with it?

23 A. And then we put it in the garage.

24 Q. "We put it," who put it?

1 A. I think he pushed it into the garage for me.

2 Q. On its wheels?

3 A. Yeah. On the wheels.

4 Q. Did it have rubber wheels, plastic wheels?

5 What kind of wheels did it have?

6 A. It has rubber wheels on it I believe.

7 Q. And who has that tiller today?

8 A. David.

9 Q. Okay. Again, that visit in September, 2011
10 where Paul was dropping off the tiller never included
11 any conversation about the chain saw accident or his
12 injuries, correct?

13 A. No. No.

14 Q. Is that correct?

15 A. Yes. Uh-huh.

16 Q. So you have now told me everything, every
17 communication and every visit that you have had with
18 Paul since his accident, correct?

19 A. Right. Correct.

20 Q. At no time then did Paul ever describe for
21 you how the specifics of the accident occurred; is
22 that correct?

23 A. Correct.

24 Q. Okay. Okay. And how long have you known

1 Paul?

2 A. Ever since he was in high school.

3 Q. So for over ten years?

4 A. Ten years. Paul is 45 and I have known him
5 ever since he was probably 18 or 17.

6 Q. So over 20 years then. Have you always known
7 him to be a trustworthy, credible person?

8 A. Yeah. As far as I know, yes.

9 Q. Do you today -- And I know the lawsuit is
10 here so I understand. That's fine. And you are kind
11 of a defendant in the lawsuit so I get that but if you
12 put the lawsuit aside, do you still consider him a
13 friend or are you thinking of him in more negative
14 terms now because of all of this?

15 A. Negative.

16 Q. Why do you think of him in negative terms
17 other than the fact that you are named in a lawsuit?
18 What's the reason?

19 A. Because, I mean, it happened as a bad
20 accident of course and you know --

21 Q. Wait. It happened -- What?

22 A. It happened as a bad accident but when I
23 heard from the ER on how the injuries went and then as
24 time went on, many months went by, it wasn't until

1 December we knew that Paul had gotten your services
2 that there was anything that would come to this
3 recourse and he never said anything to me about the
4 accident either thinking that his arm, you know, might
5 just -- you know, thank God it was okay and then all of
6 this came out, so.

7 Q. I mean, you are not a doctor and I am not a
8 doctor --

9 A. No.

10 Q. -- and I guess we have to defer to what they
11 think.

12 A. Uh-huh.

13 Q. What you are basically saying is you thought
14 it was just a relatively small injury, right?

15 A. What about EKGs?

16 Q. Again, I am not going to get into the --

17 A. Medical. Forget that.

18 Q. -- into the medical. All I am asking you
19 is -- My question is: Why are you now kind of feeling
20 negative toward Paul today? What is the issue? Is it
21 because you thought this wasn't much of an injury or
22 you just don't think Dave did anything wrong or what?
23 What is the reason?

24 A. Well, usually I have had those tests done.

1 Q. Listen, I don't want to get into all that.

2 A. It's because of the testing that he had done
3 it proved that he didn't have any nerve damage done at
4 one point and then along the way it all happened and
5 then he --

6 Q. So your negative feelings toward Paul today
7 is because you think that the medical treatment that
8 he is getting isn't related to this accident but he
9 thinks it is. Is that what you are saying?

10 A. I am saying that his EKG that he had done to
11 prove nerve damage didn't show positive, so.

12 Q. That's up to his doctors to talk about.

13 A. Oh, I see. Okay.

14 Q. That's not him. He is not a doctor. He is
15 not going to testify to his EKG. You know --

16 A. Okay. Fine.

17 Q. He doesn't know --

18 MR. BARCH: Carolyn, slow down. Answer the
19 question. He wants to know why you view him
20 negatively. Is it just because of the lawsuit and his
21 claimed injuries or is there something more?

22 THE WITNESS: It's just the claim from the
23 lawsuit.

24

1 BY MR. MAST:

2 Q. The injuries?

3 A. Yes.

4 Q. The injuries issue, right?

5 A. Right.

6 MR. MAST: Okay. I don't have any more.

7 MR. ACCARDO: I got nothing.

8 THE WITNESS: He probably had enough of me
9 already probably. Good thing I ran out of water.

10 MR. BARCH: Hold on one second.

11 MR. MAST: How do you feel about me, negatively?

12 THE WITNESS: I don't feel negatively about any
13 of you guys. I am just glad I am not a lawyer, I am
14 not a doctor, I am not a police officer.

15 MR. BARCH: Let's not talk about things that are
16 not associated with the deposition on the record at
17 least.

18 THE WITNESS: Okay.

19 EXAMINATION

20 BY MR. BARCH:

21 Q. With respect to the tree branches, the size
22 of the trees, the size of the branches that were being
23 cut, those were all estimates that you gave, correct?

24 A. They were, yes.

1 Q. You didn't go out there and measure any of
2 this stuff?

3 A. No.

4 Q. Okay. And with respect to David using the
5 chain saw that day that Paul was injured or the day he
6 cut the apple tree up or the day he cut up the
7 branches from that larger tree, did you feel that you
8 had any skill that you could give to him? Did you
9 feel you could teach him anything about the use of
10 chain saws because you had never used one?

11 A. No.

12 Q. Did you at any point see anything in
13 connection with David's use of a chain saw that was a
14 concern for you based upon what you did know, if
15 anything, about using chain saws?

16 A. No.

17 Q. Was there anything about the way David was
18 using a chain saw that you suspected was dangerous?

19 A. No.

20 Q. Did you feel like -- Knowing that Paul was
21 out there that day, knowing that David was out there
22 the day he, Paul, was hurt, did you believe there was
23 any -- did you feel compelled to tell them that they
24 could be hurt by a moving chain blade?

1 A. No.

2 Q. Did you think that -- did you believe that
3 was something obvious?

4 A. Right.

5 MR. BARCH: That's all I have.

6 MR. MAST: Okay.

7 MR. BARCH: We are going to probably reserve
8 signature on this one.

9 (FURTHER DEPONENT SAITH NOT.)

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C E R T I F I C A T E

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2
3
4 I, Paula Ann Erickson, Certified Professional
5 Reporter, Registered Professional Reporter and Notary
6 Public, do hereby certify:
7

8 That the witness in the foregoing deposition
9 named was present at the time and place therein
10 specified;
11

12 That the said proceeding was taken before me
13 as a Notary Public at the same time and place and was
14 taken down in shorthand writing by me;
15

16 That this transcript is a true and accurate
17 transcript of my shorthand notes so taken, to the best
18 of my ability.
19
20
21
22
23
24

1 I further certify that I am neither counsel for
2 nor related to or employed by any of the parties to
3 this action and that I am not a relative or employee
4 of any counsel employed by the parties hereto or
5 financially interested in the action.
6

7 
8 Paula Ann Erickson

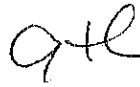
9 Certified Shorthand Reporter

10 Registered Professional Reporter

11 License No. 084-003899

12 Notary Public
13

14 Dated this

 day

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16 of

, 2013.
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MEMORANDUM

TO: File

FROM: Hans

DATE: March 21, 2013

SUBJECT: **DISCOVERY DEPOSITION OF CAROLINE MCGUIRE**

CASE: PAUL DULBERG

On March 20, 2013, I took the discovery deposition of Caroline McGuire before court reporter, Paula Erickson at Urbanski Reporting 312/977-1777. The transcript was ordered by defense counsel, we ordered a copy.

Caroline McGuire is a real talkative person and has difficulty waiting for the questions to finish before she gives an answer. However, she is very pleasant and would probably come across credible. The following favorable and unfavorable testimony was given.

FAVORABLE TESTIMONY:

1. She has always known Paul to be credible, honest and has never heard anything from Paul's mouth that he was trying to get people to lie or to say things to allow him to make a recovery so that he will never have to work again.
2. Neither she nor her husband, William are able to use a chainsaw and therefore, they purchased the chainsaw that Dave was using at the time of Paul's accident earlier in the year for Dave to use to cut trees on their property.

UNFAVORABLE TESTIMONY:

1. Dave is experienced for many years using a chainsaw and she has always seen Dave use a chainsaw in a careful and proper manner.
2. She was never outside while Dave and Paul were on the day of the accident and therefore, she doesn't know who was doing what with regard to the cutting up of the branches behind their house. She delivered water to them once, but does not recall who was doing what or what type of work they were performing other than cutting up the branches. She thinks Dave was using the chainsaw.

Caroline McGuire is married to husband, William and they have been married for 20 years. She was previously married to Alan Gagnon, but he died 16 years ago, they were divorced before he died. William is now her son and two daughter's step-father. William is disabled but he use to work as

a carpenter before he retired. Caroline is retired too, but she use to work in a factor job before she retired. She is 66 years old.

About 4 years or so, Dave married his wife Pam and they moved up to Genoa City, WI to live. They have lived up there for the past 12 years. Dave is involved in autobody work at their house.

On the day of the accident, June 28, 2011, they had 2 evergreens in their backyard that they wanted cut down. Dave had some experience using a chainsaw, so they asked Dave to cut the limbs from the tree from the bottom up from about 15 to 20 feet. They were then going to hire a tree contractor to cut the tree trunks down later because they were so tall and large.

Before Paul's accident, Dave had been to their property to cut trees down on 3 separate occasions. One was in early May 2011, when they had a big tree in front of their property that was cut down by a tree service and then Dave and Paul used a chainsaw to cut up the sections that were left for Paul to use as firewood in his house. She was very complimentary of Paul, thought him to be a nice boy and they had known him for years and years and always thought him to be a credible, honest person.

Later, around June 2011, Dave was asked to cut an apple tree down in their backyard and he did that alone. The apple tree was about 20 feet tall, maybe 6-8 inches wide.

The third time Dave did tree work at their property was just prior to Paul's chainsaw accident on June 28, 2011. Dave started the work one day earlier by himself. He was cutting the bottom section of branches on two evergreens in their backyard. Paul came the next day to help Dave cut up the branches. She doesn't know what Paul was doing or who was doing what type of work, but she heard later that Paul was holding the branch and Dave cut him with the chainsaw. Dave had a different recollection. Dave told her that Paul was holding the branch and Paul moved his arm up from a different position and Dave did not know that and Dave cut him with the chainsaw.

At the time of Paul's accident on their property in June 2011, she was inside cleaning up and doing household chores while her husband, William was watching tv. She had only gone out twice that day. One to give water to Paul and Dave and the other time to play with Paul's dog in the backyard for a few minutes. She never saw the course of their work or what they were doing that day.

All of the sudden Paul rushed into the house with Dave and said that he was cut by the chainsaw. She wrapped his right arm with a towel and then Dave took Paul in Paul's truck to the hospital - NIMC. A couple hours later Paul and Dave returned and Paul said that he needed to get a prescription filled for pain medication. She offered Paul \$50 to get the pain medication filled because he had no money.

The day of Paul's accident, she never spoke to Paul or Dave about the specifics of the accident. She thinks the next time she spoke to Dave a couple days later Dave spoke a little bit more specifically about what had happened and told her that Paul was holding a branch and was moving his arm up to reposition it and he did not know that and cut Paul's arm.

She saw Paul a few times after the accident maybe 3 times. The first time was within a week when she visited Paul's house to see how he was doing. He said that he was ok but it hurts. Two weeks later she called Paul on the phone and Paul said that he was doing ok. The last time she spoke to Paul after the accident was in September 2011 when Paul went to her house to drop off a tiller that

was owned by Dave. The tiller weighs about 200 lbs and she explained that Paul picked it up with his two arms from a trailer and put it on the ground and wheeled it into the garage all by himself. Without help.

S:\Main\DULBERG, PAUL\Memos\Memo re DEP of Caroline McGuire 3-21-13.wpd

ORIGINAL

Discovery Deposition
of **DAVID GAGNON**

Date: February 4, 2013

Case: Dulberg v. Gagnon

Urbanski
Reporting Company

Phone: 312-977-1777

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND
JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
))
Plaintiff,))
))
vs.) No. 12 LA 178
))
DAVID GAGNON, Individually,)
and as Agent of CAROLINE))
McGUIRE and BILL McGUIRE;))
and CAROLINE McGUIRE and))
BILL McGUIRE, Individually,))
))
Defendants.))

The deposition of DAVID A. GAGNON taken before
Margaret Maggie Orton, Certified Shorthand Reporter
and Registered Professional Reporter, taken pursuant
to the provisions of the Illinois Code of Civil
Procedure and the Rules of the Supreme Court thereof
pertaining to the taking of depositions for the
purpose of discovery at 3421 West Elm Street, McHenry,
Illinois, commencing at 1:12 p.m. on February 4, 2013.

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17 On behalf of the Defendants Carolyn McGuire and
Bill McGuire.
18

19 * * * * *

I N D E X

WITNESS

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E X H I B I T S

GAGNON DEPOSITION EXHIBIT

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1 (Witness sworn.)

2 MR. MAST: All right. This is the discovery
3 deposition of David Gagnon taken pursuant to notice in
4 accordance with the applicable rules.

5 WHEREUPON:

6 DAVID A. GAGNON,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MR. MAST:

11 Q Mr. Gagnon, I'm Hans Mast. I represent Paul
12 Dulberg. I'm going to ask you some questions
13 regarding this chain saw incident. Start out with
14 some background information. I just want to make
15 sure -- And I imagine you've never given a deposition
16 before; is that correct?

17 A I have on my own behalf. I was in a car
18 accident several years back.

19 Q Okay. So you know the process?

20 A Fairly well, yeah.

21 Q Okay. So really the process is simple.
22 Questions and then you answer the questions and we go
23 back and forth until we're done, okay?

24 A Okay.

1 Q I want to make sure, though, that your
2 answers are responsive to my questions. So if you
3 don't understand the question, let me know. Otherwise
4 if you answer it, we're all going to assume that you
5 understood the question, okay?

6 A I understand.

7 Q Okay. Let's see what else. You're aware
8 obviously of Paul's accident that this case is all
9 about that happened, I think, at your parents' house
10 during some chain saw work at their house? You're
11 aware of that?

12 A Yes, I'm aware of that.

13 Q Okay. And I believe, and you can correct me
14 if I'm wrong on anything obviously, but I believe it
15 happened June 28th, 2011? Does that --

16 A Yes.

17 Q -- sound right?

18 A Yes, that sounds correct.

19 Q Okay. Do you remember what day of the week
20 that was?

21 A No, I do not.

22 Q Was it Saturday or Sunday?

23 A No, it was not. It was during the week, I'm
24 quite sure.

1 Q Okay. I'd like to start now and go through
2 some background information. So why don't we start
3 with this: What's your date of birth?

4 A 4-3-67.

5 Q And that makes you how old today?

6 A I am 45.

7 Q Are you employed today?

8 A I am self-employed as I have been my entire
9 life.

10 Q What are you self-employed in doing?

11 A I do auto restorations and collision repair.

12 Q Do you do that under your own name?

13 A I do that under the name of Dave's Auto Body.

14 Q At home?

15 A Yes.

16 Q Is that an incorporation or some type of
17 formal --

18 A No.

19 Q -- organization?

20 A No. No.

21 Q Okay. How long have you been doing auto
22 restoration and collision repair under Dave's Auto
23 Body, under that name?

24 A Probably 20 years.

1 Q Has it always been full-time?

2 A I would have liked it to have been. As work
3 comes, I work on that; otherwise, I fill the void with
4 other things that I can perform.

5 Q All right. Have you had to fill the void
6 with other things in the last ten years?

7 A Yes, and I have been employed with other
8 people in between.

9 Q Okay. So we'll get to that in a minute,
10 then, okay?

11 A Okay.

12 Q What is your current address?

13 A 39010 90th Place, Genoa City, Wisconsin.

14 Q So that's right over the border here to the
15 north?

16 A Yeah. 53128 is the zip.

17 Q Who do you live with there?

18 A My wife.

19 Q What's her name?

20 A Pamela.

21 Q Anybody else live at that address?

22 A No.

23 Q Do you have any children?

24 A No, I do not.

1 Q And your Social Security number?

2 A In full?

3 Q Yes.

4 MR. CALLAHAN: Can we do this off the record
5 then?

6 MR. MAST: We can do it off the record.

7 BY MR. MAST:

8 Q Let's say on the record, what are the last
9 four digits?

10 A 2535.

11 Q 2535?

12 A Yes.

13 MR. MAST: Okay. Give it to us off the record
14 now.

15 (Discussion off the record.)

16 BY MR. MAST:

17 Q Did you give us your --

18 MR. CALLAHAN: Back on the record?

19 MR. MAST: Back on the record.

20 BY MR. MAST:

21 Q Did you give us your full Social Security
22 number off the record?

23 A Yes.

24 Q Okay. All right. Do you have any criminal

1 convictions on your record in the last ten years?

2 A No.

3 Q How long have you known Paul Dulberg?

4 A 35 years.

5 Q And 35 years, how did you meet him?

6 35 years --

7 A Riding bicycles in a place we had deemed
8 called the mini trails.

9 Q So were you neighbors, or ...

10 A We lived close by. He lives in Pistakee
11 Terrace, my mother -- or my mother lives in Pistakee
12 Terrace; he lives in Pistakee Highlands which is
13 about, I would say, a quarter mile maybe away from one
14 another.

15 Q And the mini trails were by your mother's
16 house?

17 A They were closer to his home.

18 Q Closer?

19 A They were closer to his home. They were just
20 down the road from his home.

21 Q Okay. And since you kind of met at the
22 trails and you became -- a friendship arose?

23 A Yeah. Yes.

24 Q Okay. Has that friendship been in pretty

1 good standing since then till today?

2 A Yes, and as of right now I don't know where
3 it stands. I have not spoken with him as I was
4 directed not to.

5 Q Fair enough. But at least in your mind is it
6 still in good standing -- Hold on. Let me just finish
7 the questions. Is your friend- -- At least in your
8 mind, is your friendship still in good standing with
9 Paul Dulberg today?

10 A No.

11 Q Okay. And is that because of the suit?

12 A Yes.

13 Q Okay. Fair enough. Understood about that.

14 Until the suit was filed, okay, was your
15 friendship with Paul Dulberg in good standing?

16 A Yes.

17 Q Had it been all the way for those 35 years
18 until the suit was filed?

19 A Yes.

20 Q Okay. So there was never any times where
21 your friendship was seriously tested over that
22 35 years?

23 A No.

24 Q Is that correct?

1 A That's correct.

2 Q Okay. And you can correct me if I say
3 something that's not accurate, but so is it my
4 feeling, even though you don't know what Paul's view
5 of your friendship is, this suit being filed against
6 you has brought negative feelings in your mind about
7 your friendship?

8 A Yes, and only recently, if I may.

9 Q Okay. Go ahead.

10 A At first when it had arisen, this situation,
11 we were still talking to one another and I was freely
12 submitting both insurance information, whatever he
13 requested because, you know, there wasn't a problem at
14 that time. But things turned as Paul had said some
15 things that didn't really go well with me.

16 Q You mean in his deposition or somewhere else?

17 A Personally to me.

18 Q Well, if -- I guess I've got to ask you what
19 those things were then.

20 A Okay. After bringing him to the hospital
21 after this occurrence took place with his vehicle, we
22 had left. Myself still being very (inaudible) and my
23 heart being concerned as to his condition because he's
24 my friend, he turned to me just leaving the hospital

1 and said that we can make a lot of money at this.

2 Q Okay. Was anybody else present during that
3 conversation?

4 A No. No.

5 Q Was that in your car on the way from the
6 hospital?

7 A That was in his vehicle immediately leaving
8 the hospital and still in the parking lot at the
9 hospital.

10 Q Was that the same day of your accident -- of
11 his accident?

12 A Yes.

13 Q Okay. So that would have been June 28, 2011,
14 he was discharged out of the hospital and he was in
15 his car?

16 A Passenger's seat; I was driving, yeah.

17 Q Okay. Did you not have a car at the time or
18 something?

19 A No. His vehicle was at my house -- my
20 mother's house, I should say, where the occurrence
21 happened; and when we left, he said, Just take my car,
22 so we took his vehicle to the --

23 Q All right. Let me stop you because I
24 understand what you're saying. You're saying after

1 his injury you drove his car with him as a passenger
2 to the hospital?

3 A Yes.

4 Q He got treated, discharged, and then you were
5 back in his car going back to your mom's house?

6 A Never left the parking lot and he said that.

7 Q No, I understand that --

8 A Yes, but that's --

9 Q -- but that's where you were going?

10 A Yes. Yes.

11 Q All right. Let's try not to -- I'll try and
12 won't talk over you; you try not to talk over me.

13 All right. So you're leaving the
14 hospital still in his car on the way to your mother's
15 house, right? Right? That's on the way? That's
16 where you were going?

17 A Right, that's where we were going, but we
18 still had not left the parking lot.

19 Q All right. I didn't say anything about where
20 you were. I'm saying you're in the car on the way to
21 your mother's house, right?

22 A Yes.

23 Q Okay.

24 A Yes.

1 Q But before you left the parking lot, you're
2 in the car in the parking lot of the hospital and
3 that's when he made that statement?

4 A Yes.

5 Q Did he say anything else during that
6 conversation that you -- that you didn't like?

7 A No.

8 Q Okay. So that was the extent of anything
9 that he said about financial aspects of this case?

10 A Yes.

11 Q Is that the only time he said anything about
12 financial aspects of this case?

13 A No.

14 Q When is the next time he said anything like
15 that?

16 A I had visited him shortly after because we
17 were still in friendship, and I stopped in his home,
18 and ...

19 Q How soon after the accident?

20 A Oh, this is about three or four months after
21 the accident.

22 Q Okay.

23 A It was -- Now, I remember it was cold. It
24 was winter so I can't say exactly what day, but I was

1 leaving and he had mentioned that, This may possibly
2 be the best thing that could happen to me because I
3 won't have to work the rest of my life.

4 Q Any witness to that conversation?

5 A Yes, Michael Mcartor.

6 Q Who?

7 A Michael Mcartor, who lives with him.

8 Q How do you spell the last name?

9 A Capital M small C, Artor, A R T O R or E R;
10 I'm not quite certain of that spelling, but he resides
11 with Paul there at his home.

12 Q Where Paul's living now?

13 A Yes.

14 Q Okay. And where did that conversation take
15 place four months after the accident?

16 A In his kitchen where -- In his kitchen.

17 Q And the extent of this conversation regarding
18 the financial aspects that we're talking about is that
19 he said, This might be the best thing that happened to
20 me, and what else? Was there anything else?

21 A Because I may not have to work another day of
22 my life.

23 Q Because I what?

24 A May not have to work another day of my life.

1 Q Did he say anything else during that
2 conversation now about the financial aspects of this
3 accident?

4 A No.

5 Q Did he say anything else during that
6 conversation that you found uncomfortable or wrong?

7 A No. No.

8 Q Okay. Any other things that Paul has said
9 that you believed were wrong or had some kind of
10 financial component to this accident other than those
11 two that we've -- you've already described?

12 A There was also another instance where he
13 visited me at my home, I believe it was in 2012 when
14 things were going along here; we were still in
15 conversation with one another.

16 Q Okay. Let me just stop you. After the suit
17 was filed or before the suit was filed?

18 A It was after the suit was filed, yeah.

19 Q Okay.

20 A And he was not -- if not coaching me,
21 reassuring me that if I did make it easier, shall we
22 say, or ... that I would be awarded something for my
23 cooperation in it.

24 Q Was there any witnesses to that

1 communication?

2 A No. No.

3 Q Did he say how you would be awarded?

4 A No.

5 Q Did he promise to pay you anything in
6 exchange for your testimony?

7 A Yes.

8 Q What did he promise to pay you?

9 A \$10,000.

10 Q What did he say?

11 A If he got a hundred thousand dollars.

12 Q What was the -- I need to know the exact
13 wording of that communication so that we all can
14 understand what he said.

15 A If this goes well for me, I wouldn't have a
16 problem with giving you \$10,000 if say I was to get a
17 hundred thousand dollars.

18 Q Okay. Did he, though, make that hundred --
19 that \$10,000 conditional on what you would say or just
20 said, If it goes well for me, I'll give you 10,000 out
21 of the hundred thousand?

22 A He didn't place conditions on it.

23 Q Okay.

24 A I was assuming.

1 Q Okay. Fair enough. That's very honest of
2 you. I appreciate that. This is my question then --
3 Well, let me go further. Did he say anything else
4 during that conversation in 2012 about anything you
5 felt was inappropriate or uncomfortable for you or
6 related to financial interests that he was --

7 A No.

8 Q -- talking about?

9 A No, he did not.

10 Q Okay. Any other conversations with Paul now?
11 We've talked three different incidents now so I want
12 to make sure I've talked about everything. Is there
13 any other conversation you've had with Paul or contact
14 with Paul regarding any uncomfortable or uneasy
15 conversations or things he said relating to either
16 financial interests or some other component of the
17 suit or claim?

18 A There was one time where he came up and he
19 was asking for information, which I gave him, my
20 insurance.

21 Q When was this? Just give me a date so I know
22 how to ...

23 A I cannot supply you with a date. I could say
24 that it was before that last incident that I just

1 spoke of of the hundred thousand and \$10,000 offering
2 there.

3 Q Was it after suit was filed or before suit --

4 A It was after the suit was filed.

5 Q Okay.

6 A And he showed up at my residence with an
7 iPad, which he's into techy things, things like that,
8 and I wasn't aware that there was a camera on front
9 and back but I was aware that there was a camera that
10 was on and he was showing me what was being viewed on
11 the screen, and then we proceeded into our house and
12 it was on again. He was showing me how you can look
13 at the front and the rear screen and me not being of
14 much interest of this device, I just told him, Could
15 you shut that thing off. I felt as though I was being
16 inventoried.

17 Q Okay.

18 A So that would be the only other issue.

19 Q Okay. Fair enough.

20 A Yeah.

21 Q I appreciate that. Did he say or do anything
22 that you felt was wrong or inappropriate regarding the
23 case in and of itself?

24 A No.

1 Q Okay. Nothing about financial interest --

2 A Not that time, no, nothing.

3 Q Okay. Do me a favor, and you're doing very
4 good so far, but you were just kind of cutting me off
5 the last --

6 A I'm sorry.

7 Q -- part of my sentence and I want to make
8 sure you understand the full thing I'm going to say,
9 okay? So let's try not to cut each other off.

10 All right. So at least, and you can
11 correct me if I'm wrong, as I understand it, there are
12 just three conversations where Paul made any
13 statements that felt -- that made you feel
14 uncomfortable pertaining to financial parts of the
15 lawsuit?

16 A Yes.

17 Q Okay. Or the claim; fair enough?

18 A Yes. Yes.

19 Q And that was the day of the accident where he
20 made that one-sentence statement, correct?

21 A Mm-hmm.

22 Q Yes?

23 A Yes. Yes.

24 Q And that was four months later where he made

1 that statement about, This could be the best thing
2 that could happen to me because I might not have to
3 work the rest of my life?

4 A Yeah.

5 Q Yes?

6 A Yes.

7 Q And then there was the last thing that was in
8 2012 after suit was filed where he said -- although he
9 didn't condition it, he said, Hey, if I get a hundred
10 thousand, I'll give you \$10,000 of that?

11 A Yes.

12 Q Right?

13 A Yes.

14 Q Okay. And would it be fair to say, including
15 that last 2012 conversation, he never said, If you do
16 this for me, I'll do this for you; fair enough?

17 A Yes.

18 Q Is that true?

19 A That's true.

20 Q Okay. So he never -- You could make the
21 assumptions you want, and you're free to do that,
22 okay, but my question is nothing he ever said
23 pertained to having him wanting you to lie for him?

24 MR. BARCH: I'm going to object. It's

1 argumentative, but go ahead.

2 MR. MAST: Go ahead.

3 MR. CALLAHAN: I'll join that objection.

4 BY THE WITNESS:

5 A No, he was blatantly asking me in regards to
6 what he was asking me to do to make it easier for him.

7 Q Right.

8 A And making it easier for him would not just
9 be submitting the truth in my judgment, but it would
10 be submitting to what he would want me to say so that
11 it would be easier for him.

12 Q I understand what your judgment is.

13 A Yes.

14 Q This is what I'm questioning, though. My
15 question is what he said to you, okay. You can take
16 any assumptions you want from what he said to you;
17 you're free to do that, okay. My question, though, is
18 did he ever tell you that he wanted you to lie for
19 him?

20 A He did not say he wanted me to lie for him,
21 no.

22 Q Okay. You took that from an inference of
23 what else he said that you've already told me, right?

24 A Yes.

1 Q Those were inferences you made from what he
2 told you, correct?

3 A Yes.

4 Q Okay. Did you ever say, Hey, do you want me
5 to lie for you -- Well, let me put it this way. I'm
6 going to try to just summarize it.

7 Is it fair to say he never asked you to
8 lie for him?

9 A That is correct.

10 Q Okay. Is it fair to say he never agreed to
11 give you money in exchange for what you would say to
12 him -- say for him?

13 A There is one more thing that I said that I'm
14 recollecting now.

15 Q Okay.

16 A And I said, Well, what would you want me to
17 say, that I was freewheeling a chain saw and I was
18 negligent?

19 And he said, That sure would make things
20 easy.

21 Q Okay. And when did he say that, which
22 conversation?

23 A That same conversation when he spoke of the
24 hundred thousand dollars and the \$10,000.

1 Q So that's the 2012 conversation?

2 A Yes. Yes.

3 Q Okay. And what -- So let me get it clear
4 now. The 2012 conversation that we've already talked
5 about was after suit was filed?

6 A Yeah.

7 Q It says, If you would -- What you're saying
8 he said is if he would be awarded something, say a
9 hundred thousand dollars, he would give you \$10,000 of
10 it, right?

11 A Yes.

12 Q And now you're adding on to what else did he
13 say?

14 A He -- I said to him, Well, what would you
15 expect from me? What would you want me to say, I was
16 freewheeling a chain saw and I was negligent? I said
17 I would not do that. I'm going to tell the truth.
18 And that's basically where our friendship -- I haven't
19 spoke to him really very much or been with him or
20 conversed with him since then.

21 Q All right. You're going a little further
22 than what I'm asking, though, but that's fine. My
23 question was, what more did he say and you told me
24 what you said, all right, so let's just go straight

1 with what I'm asking. I'm asking other than, Hey, if
2 I get a hundred thousand dollars, I'd be glad to give
3 you \$10,000 of that, other than Paul saying that, what
4 else do you recall Paul saying in that 2012
5 conversation at your house?

6 A Nothing.

7 Q Oh, okay. It was just what you said then?

8 A That's what I said after. I sufficed by way
9 of example, Is this what you would want?

10 And he said, That sure would make it
11 easy.

12 Q Well, then that is something that he said.
13 Listen, this is what I'm trying to get at, I'm trying
14 to find out what he said, okay?

15 A Okay. He said nothing in response to that
16 except he said, That sure would make it easy.

17 Q All right. You're interrupting me again.
18 Let's go back at it again.

19 A Okay.

20 Q I want to go step by step because I want to
21 try to find out everything you're going to say. I
22 don't want there to be any stones unturned, okay?

23 A Yeah.

24 Q You told me that in that 2012 conversation he

1 said, If I get a hundred thousand dollars, I'd be
2 happy to give you \$10,000 of that. Is that what he
3 said?

4 A Correct, that is what he said.

5 Q Okay. In response to that, what did you say?

6 A I said, What would you want me to say, I was
7 freewheeling a chain saw and I was negligent? I said,
8 I will not do that.

9 Q Okay. All right. Stop. That's what you
10 said, okay. And then what did he say in response --

11 A Nothing.

12 Q -- to that?

13 Okay. Nothing, right?

14 A Nothing.

15 Q Okay. Because I thought you said that he
16 said, Well, that would make it easier.

17 A Correct. I'm sorry. That was his closing
18 statement after I said that.

19 Q So he did say something?

20 A Yes, he did. I'm sorry.

21 Q Okay. So let's go through it again now.

22 A All right.

23 Q Because I want to make the chronology, I want
24 to make that correct, okay?

1 A Okay.

2 Q In the 2012 conversation at your house you
3 said that Paul made a statement that, If I get a
4 hundred thousand dollars of this, I'll give you --
5 I'll be happy to give you \$10,000 of this -- of that.
6 Is that what he said?

7 A Correct.

8 Q Okay. In response to that you said, What do
9 you want me to say, that I was freewheeling and
10 negligent? I will not do that. Was that your
11 statement?

12 A That was my --

13 MR. CALLAHAN: I thought he said freewheeling a
14 chain saw and that I was negligent.

15 BY MR. MAST:

16 Q Okay. Is that what you said?

17 A Yes.

18 Q Okay. And then in response to that, what did
19 he say?

20 A He said, That would make it easy.

21 Q Okay. Did he say that's what he wants you to
22 say or did he just say those words?

23 A He just said those words.

24 Q Okay. Is that all he ever said then after

1 that conversation at the end of that conversation?

2 A Yes.

3 Q All he said was, That would make it easy?

4 A Yes.

5 Q Okay. All right. So we've got three
6 conversations, one on the day of the accident where he
7 said, We can make a lot of money at this, right?

8 A Correct.

9 Q That's all he said during that conversation
10 that was uneasy or uncomfortable or financially
11 motivated, correct?

12 A Yes.

13 Q Okay. Second conversation four months later,
14 you visited him at his house, right?

15 A Yes.

16 Q And he said, This may be the best thing that
17 happened to me; I might not have to work the rest of
18 my life?

19 A Yes.

20 Q Is that all that he said that was uneasy or
21 uncomfortable or related financially to this case?

22 A Yes.

23 Q And the third thing was 2012 where he said if
24 he gets a hundred, he'd give you ten and then you

1 said, Well, what, if I say that -- What do you want me
2 to say, if I'm wheeling it, the chain saw, and
3 negligent?

4 And he said, Well, that would make it
5 easy.

6 Is that everything out of that
7 conversation that was uneasy, uncomfortable or
8 financially related?

9 A That is all, yes.

10 Q Okay. Have you now --

11 MR. CALLAHAN: Can I object? I think he did
12 leave off that one comment, I'm sorry, the one he
13 said, I won't do that.

14 BY MR. MAST:

15 Q Okay. Yes, and you also said you wouldn't do
16 that after you --

17 A I said that I would not do that, yes.

18 Q After your con- -- After your response to
19 what he said, you said, I would not do that?

20 A Yes.

21 Q Okay. Have we now covered everything that
22 you and Paul talked about after the accident that made
23 you feel uncomfortable, uneasy or financially related
24 to this accident?

1 A Yes, that would be all.

2 Q Okay. Very good. That wasn't too hard.

3 A No.

4 Q Oh, one final question on those things.

5 A Okay.

6 Q Were there any witnesses to either of those
7 three conversations other than you said the --

8 A Michael Mcartor.

9 Q Michael Mcartor was a witness to the second
10 one four months after the accident?

11 A Yes, which was at Paul's home in his kitchen,
12 yes.

13 Q Right. Any other witnesses to any other
14 parts of those communications?

15 A No.

16 Q Just you and Paul and then the second
17 conversation was with Michael?

18 A Correct.

19 Q Okay. Are you friends with Michael? Have
20 you ever been friends with Michael?

21 A I've been friends with Michael probably about
22 25 years.

23 Q Are you still friends with Michael?

24 A As far as I know, yes.

1 Q Okay.

2 A This is not related to him.

3 Q So the reason you're not friends with Paul
4 anymore is after the third conversation in 2012 where
5 you said, I would not do that, and he said, That would
6 make it easy, you haven't spoken to him since; but in
7 your mind it's not friendly because of what you
8 thought he was asking you to do?

9 A Yes.

10 Q Fair enough?

11 A Yes.

12 Q Do you know in his mind if he thinks you're
13 still friends?

14 A I do not know.

15 MR. CALLAHAN: I'd just object as to relevancy
16 and as to speculation.

17 BY THE WITNESS:

18 A I don't know.

19 MR. BARCH: Join the objections.

20 BY THE WITNESS:

21 A I haven't spoken to him. I don't --

22 Q Hold on. Just let them give the -- All
23 right. They objected.

24 MR. CALLAHAN: You may answer.

1 BY MR. MAST:

2 Q What's your answer to that question? Do you
3 know in Paul's mind whether he thinks you guys are
4 still friends or not?

5 A I do not know. I have not conversed with him
6 in quite a while now.

7 Q All right. And then that fourth thing that
8 you talked about didn't really have to do with any
9 statements but he had an iPad and it looked like he
10 was videoing or something. He didn't do anything
11 wrong during that; you just weren't sure what he was
12 up to, right?

13 A Right.

14 Q Okay. That didn't have anything to do with
15 any statements or anything; fair enough?

16 A Fair.

17 Q Okay. So we've covered all the statements
18 that Paul made that made you feel uncomfortable?

19 A Yes.

20 Q Okay. All right. How long have you been
21 married?

22 A I've been married since 2008, August 16th.

23 Q Okay. Does your wife Pamela know Paul?

24 A Yes.

1 Q On a -- like a friendly basis or just sees
2 him every now and then? I mean, how would you
3 describe her knowledge of Paul, just passing?

4 A He's my friend and is friends with him is the
5 same; there was never anything between us until ...

6 Q I mean, did she spend as much time with
7 Paul --

8 A No.

9 Q -- as you did?

10 A No.

11 Q Okay. Her contact with Paul was just passing
12 then? It wasn't where she would do anything with him?

13 A Correct.

14 Q Is that fair enough?

15 A Yeah, correct.

16 Q Okay. And she doesn't have any knowledge
17 regarding any communications Paul made regarding the
18 incident that were uncomfortable or financially
19 motivated?

20 A No.

21 Q Is that fair?

22 A That's fair.

23 Q Okay. Okay. What's the highest level of
24 education you have?

1 A I was accepted at DeKalb University. I
2 didn't pursue it until its end, and then I went to
3 College of Lake County.

4 Q You mean Northern Illinois Medical Center --
5 Northern Illinois University?

6 A Yeah, DeKalb College.

7 Q Okay. All right. I know, I'm just trying to
8 connect the dots here.

9 You were accepted at Northern but you
10 never went there?

11 A Oh, no, I went there and I just -- because of
12 turns of events in my life, personal, I did not
13 finish, and --

14 Q All right. But I'm not getting to that
15 point. I'm just --

16 A Okay.

17 Q The question was, where did you go to -- the
18 highest level of education, that's the question.

19 A I was accepted at Northern Illinois
20 University.

21 Q You weren't just accepted. You went there,
22 right?

23 A Yes.

24 Q Okay. How long did you go to Northern

1 Illinois University?

2 A Two months.

3 Q Okay. And what program were you there, just
4 general?

5 A Program?

6 Q What type of degree? What program?

7 A Oh, engineering.

8 Q Okay.

9 A Mechanical engineering.

10 Q Okay. And what year was that, approximately?

11 A That was 1985.

12 Q Instead of going to DeKalb or at least after
13 two months of going to DeKalb, where did you go after
14 that?

15 A I pursued employment as an auto body worker.

16 Q With who?

17 A It was called Lakeland Autobody. It was in
18 Volo, Illinois.

19 Q Are they still together?

20 A No.

21 Q How long did you work there?

22 A Three years.

23 Q Doing auto body work?

24 A Correct.

1 Q Who was your supervisor?

2 A Owner and supervisor Brian Schuman
3 (phonetic).

4 Q Brian what?

5 A Schuman.

6 Q Schuman?

7 A Yeah, Schuman.

8 Q So after two months of DeKalb, you went to
9 Lakeland Auto?

10 A Mm-hmm.

11 Q Right?

12 A Yes, correct.

13 Q Okay. When did you go to -- You said you
14 went to another college?

15 A CLC, College of Lake County.

16 Q When was that?

17 A I believe that was 1987.

18 Q Sometime while you were at Lakeland?

19 A Yeah, I was -- Yes, I was working at the auto
20 body.

21 Q And how long were you at CLC?

22 A I want to say six months.

23 Q Okay. On what program?

24 A Same, mechanical engineering.

1 Q Did you finish that program?

2 A No, I did not.

3 Q Why not?

4 A Because I needed to earn money, and I wasn't
5 earning enough doing -- going to school and working.

6 Q Okay.

7 A Pretty physical job, auto body.

8 Q Okay. Any other college education after high
9 school?

10 A Completed, no.

11 Q Not -- I didn't say completed, any other
12 college education after high school? Did you go to
13 any other colleges?

14 A None other than the ones I had mentioned.

15 Q That's what I'm asking you.

16 A Okay.

17 Q You went to NIU and CLC. Any other college?

18 A No.

19 Q Okay. Where did you graduate high school?

20 A Johnsburg.

21 Q What year?

22 A 1985.

23 Q Okay. After Lakeland Auto, which I'm
24 assuming was somewhere around -- when you finished

1 somewhere around 1988, '89, somewhere around there?

2 A Finished ...

3 Q When you finished Lakeland Auto, I'm assuming
4 that was somewhere around '88 or '89?

5 A Yes. Yes.

6 Q Okay. Where did you go after that?

7 A I became self-employed performing the same.

8 Q To the present date?

9 A Yeah.

10 Q Okay.

11 A Yes.

12 Q Okay. Have you worked for anybody else
13 during 1989 until now other than yourself?

14 A Yes.

15 Q How many jobs are we talking, lots?

16 A One at a machine shop, Swiss Automation in
17 South Barrington, that was between 1999 and 2001, and
18 then just currently last winter working at a place
19 called Advantage Auto Body for three months. They let
20 me go.

21 Q Where was that?

22 A That -- I'm not sure what town it is. It's
23 in Wisconsin and about two miles from my home between
24 Powers Lake and Burlington.

1 Q Okay.

2 A I'm not sure what town it resides in.

3 Q And when did they let you go?

4 A They let me go just at Christmastime last
5 year.

6 Q 2012 Christmas?

7 A Yes.

8 Q All right. Any other employment since high
9 school we have not discussed?

10 A No.

11 Q Okay. Do you have any training other than
12 being self-trained on working with a chain saw?

13 A No.

14 Q So you're -- Well, let me ask you this way:
15 How long have -- Well, strike that.

16 How long have you -- Strike that.

17 When's the first time you operated a
18 chain saw yourself?

19 A Age 18.

20 Q Okay. About '85? No, wait. Is that '85?

21 MR. CALLAHAN: Yeah.

22 BY THE WITNESS:

23 A Yeah.

24 Q Yeah. About 1985 then?

1 A Mm-hmm.

2 Q Yes?

3 A Yes.

4 Q Yes. Okay.

5 Whose chain saw was that that you
6 operated first?

7 A I do not recollect. We were camping, and I
8 picked up a chain saw and was cutting firewood for the
9 group that was there.

10 Q Okay. Was Paul with you at the time?

11 A No.

12 Q Okay. Have you ever owned a chain saw?

13 A Yes.

14 Q Okay. Do you own one now?

15 A No.

16 Q Okay. During what period of time did you own
17 a chain saw?

18 A Oh, 2000 till 2004.

19 Q And for what reason did you own it and then
20 no longer own it during those four years?

21 A A friend had garbage-picked it. It was an
22 old really big chain saw that I rebuilt. I used it
23 several times and then I sold it at a garage sale
24 along with another unit that was just like it.

1 Someone wanted to fix up theirs too, so ... It was an
2 old David Bradley chain saw; it was a very old model.

3 Q Wait, I missed some of that. You said you
4 had one that you got from a friend from a garage sale
5 but another, what was the other one?

6 MR. CALLAHAN: No.

7 MR. MAST: Sorry.

8 BY THE WITNESS:

9 A No, I had -- I had one that I operated and
10 then I picked one up at a garage sale.

11 Q So you had two of them?

12 A Yeah, I had two of them, and I sold them both
13 at the same time, yeah. One worked and one didn't.

14 Q And that was from 2000 to 2004?

15 A Correct.

16 Q Okay. During 2000-2004, did you use those
17 chain saws on any type of continual basis?

18 A No.

19 Q They were just there for -- because you had
20 fixed them up and you just kind of liked to have them
21 around?

22 A No, they were very useful because they were
23 large and I used them on my property to trim off a
24 large maple branch that had fallen.

1 Q Oh, so you used them?

2 A I used the one that was working. The other
3 one was not operational.

4 Q The one that was working that you owned from
5 2000-2004, the one chain saw that was working, you
6 used only for your own personal use on your personal
7 property?

8 A Yes.

9 Q Had you used a chain saw from 1985 until
10 2000?

11 A Yes.

12 Q Whose chain saws?

13 A Once again, I'm a camper and there would be a
14 time when I would just elect myself to cut the wood, I
15 just ...

16 Q Let me ask it this way, maybe it will be
17 easier, because I know these aren't all easy
18 questions. Before 2000, okay, when you first got your
19 own chain saw, how many times would you have operated
20 a chain saw over the 15 years?

21 A At least a dozen times.

22 Q Were they all during camping trips?

23 A Yes.

24 Q Okay. And they were all somebody else's

1 chain saw they brought to the camping site and you
2 used them to cut up for camping wood?

3 A Yes.

4 Q Okay. And then beginning of 2000 you would
5 use them a little bit more frequently because it was
6 yours and you were using it on your property?

7 A Yes.

8 Q Okay. Do you have some type of forest or
9 something on your property that you use it for, or ...

10 A No, I have negligent neighbors that when
11 trees fall, they don't --

12 Q Okay.

13 A -- they don't really seem to attend to them,
14 so I opted to do the clearing myself.

15 Q Okay. So you clear up a tree here and there?

16 A Yeah. Yes.

17 Q And I know there's no way -- easy way to do
18 this, but I still have to ask the question. From 2000
19 to 2004 what would you estimate the number of times
20 you used a chain saw?

21 A Three times.

22 Q All right. So up until 2004 the total times
23 you used a chain saw was about 15 times?

24 A Correct.

1 Q Okay. All right. From 2004 until this
2 accident in June of 2011, how many times did you use a
3 chain saw?

4 A Four times.

5 Q And whose chain saw was it?

6 A The first time was a friend's, on his
7 property; second time, again, camping; third time on
8 my property, and the fourth and final time was at my
9 mother's place.

10 Q Now, when you say your property, whose chain
11 saw was it?

12 A That would be my friend Mike.

13 Q The first -- The first -- Well, okay. That
14 would be the same friend that you operated the chain
15 saw on his property the first time that you were
16 spelling these out?

17 A After the 2004, yes. Yes.

18 Q Yeah. So beginning in 2004 when you no
19 longer owned a chain saw, the first time you used it
20 after that was with a friend at his house?

21 A Yes.

22 Q And that's Mike's?

23 A Yeah. Not Mike Mcartor.

24 Q No, I --

1 A Okay. I'm just clarifying.

2 Q That's fine. Okay. Second time was out
3 camping cutting up firewood?

4 A Correct.

5 Q Third time was at your house with Mike's
6 chain saw?

7 A Yes.

8 Q And fourth time was at your parents' house?

9 A Yes.

10 Q Okay. And was that fourth time at your
11 parents' house the day of this incident or before the
12 day of this incident?

13 A It was the day of that incident.

14 Q Okay. So if I were to -- and I know this
15 isn't the easiest thing to do, but if the day of the
16 incident was June 28, 2011, when was the last time you
17 used a chain saw before that date?

18 A Oh. Datewise?

19 Q Some estimate, yeah. Within a month, a year,
20 three years?

21 A It was a year.

22 Q Within a year?

23 A Yeah, within a year.

24 Q So it would have been the prior summer maybe?

1 A Yes.

2 Q Okay.

3 A Yeah, a storm took down some branches in my
4 yard.

5 Q So that third incident after 2004, which you
6 spelled out four times you used a chain saw, that
7 third incident where it was Mike's chain saw on your
8 property was the one in 2010 during the summer?

9 A Yes.

10 Q Okay. And then the next time you used a
11 chain saw was on your parents' property on the day of
12 Paul's accident with your parents' chain saw?

13 A Yes.

14 Q Okay. Did your parents ever attempt to
15 educate you or train you on how to operate a chain saw
16 at any time in your life?

17 A No.

18 Q Up till today?

19 A No.

20 Q Okay.

21 MR. CALLAHAN: Excuse me. You say -- Just to be
22 clear, his parents, do you mean Mr. McGuire and
23 Mrs. McGuire or his father and Mrs. McGuire?

24 MR. MAST: Okay. So those are two different

1 answers, I take it?

2 MR. CALLAHAN: Yes.

3 MR. MAST: All right. So we'll go through that.
4 We will go through that.

5 BY MR. MAST:

6 Q Well, any -- All right. Whether it's
7 stepparents or real biological parents, we'll just put
8 them all in one group, okay.

9 Whether it's your stepparents or real
10 biological parents, have your parents, meaning
11 either/or, ever attempted to train you or direct you
12 in the proper method or way to operate a chain saw
13 your entire life until today?

14 A No.

15 Q Okay. Might as well go through your parents
16 then. Bill and Carolyn McGuire, are they your
17 parents?

18 A My mother is my biological mother, Carolyn
19 McGuire. William McGuire is not my biological father.

20 Q Okay. So William McGuire is your stepfather?

21 A Correct.

22 Q Is your father -- your natural father living?

23 A No.

24 Q Okay. When did he pass?

1 A 1996.

2 Q Okay. I'm assuming he had never did anything
3 with you with regard to chain saws; is that fair to
4 say?

5 A We never interacted in that way.

6 Q Okay. Did either William or Carolyn McGuire
7 ever interact with you with regard to how to use the
8 chain saw?

9 A No.

10 Q Okay. Are your -- So when I say parents,
11 since your father passed and Carolyn is your natural,
12 I'll just talk about Carolyn and William as your
13 parents, then, okay? Is that fair to you?

14 A That would be fair to me.

15 Q Okay. Have your parents -- What was I going
16 to ask you? Oh, what do your parents do presently for
17 a living?

18 A They're currently both retired.

19 Q Okay. Do you know how long they'd been
20 retired?

21 A My mother, I believe, two years now. She was
22 employed at Intermatic --

23 Q Okay.

24 A -- in Spring Grove, and William McGuire

1 worked for last Tempest Construction, and he was an
2 industrial commercial drywaller.

3 Q Okay. To your knowledge -- and, again, we'll
4 probably end up deposing them soon so we'll ask them,
5 but to your knowledge do either of your parents have
6 any expertise or experience in operating chain saws
7 except just, you know, doing it on their own and
8 around the house?

9 A They never have operated. They bought that
10 tool specifically for that -- the cutting of the trees
11 that needed to be done on their property.

12 Q And they weren't going to use it then? They
13 were letting --

14 A No.

15 Q -- you do it?

16 A Right.

17 Q Okay. So they -- The chain saw that you were
18 operating at the time of Paul's accident on their
19 property, your parents' property, that chain saw was
20 purchased by your parents for that particular project?

21 A I wouldn't say they bought it and then do
22 this, they bought the chain saw because they had known
23 that there would be -- need to be work done --

24 Q Okay.

1 A -- and I later was elected to do that.

2 Q So when they purchased the chain saw -- and,
3 again, I'll ask them these questions, but I'm
4 wondering what your knowledge is, when they purchased
5 this chain saw, your parents, did they purchase it
6 knowing that you were going to use it or just that
7 somebody else and not them were going to use it?

8 MR. BARCH: Speculation, but go ahead, objection.

9 BY THE WITNESS:

10 A I can answer that when they purchased it that
11 they didn't solely purchase it with intent for me to
12 use it.

13 Q Wait. I missed the beginning of that.

14 A When they purchased that, they did not solely
15 purchase it for my usage.

16 Q Okay.

17 A They had purchased it for trimming of trees
18 on their property --

19 Q Right.

20 A -- and then when I was elected or became the
21 person who did the work, I used that chain saw.

22 Q I understand that. My question has one
23 little branch more to it. My question was, did they
24 purchase it thinking somebody else other than

1 themselves were going to operate that chain saw?

2 A You would have to ask them that question.

3 Q So you don't know?

4 A I do not know.

5 Q Okay. Fair enough. Had you known either of
6 your parents ever to operate a chain saw before Paul's
7 accident?

8 A Neither one of them have ever operated a
9 chain saw.

10 Q You know that?

11 A I know that.

12 Q Okay. What kind of -- Are they still living
13 in the same house they were living at the time of the
14 accident?

15 A Yes.

16 Q Okay. What kind of property is that if you
17 describe it? Is it like a small little half-acre
18 property, or is it a larger --

19 A It's a small one, third-acre residential --
20 what is it called? -- ranch.

21 Q Okay.

22 A Ranch home, full basement.

23 Q How many trees would you say are on their
24 physical third-acre of property, if you had to give me

1 an estimate?

2 A I'm going to tell you.

3 Q Okay.

4 A Currently?

5 Q Yes.

6 A Ten.

7 Q Okay. Prior to the day of Paul's accident,
8 how many trees were on that property?

9 A 12. Oh, 13.

10 Q So on the day of Paul's accident, did you
11 take all three of those down then?

12 A I didn't take any trees down that day --

13 Q Okay.

14 A -- or during this occurrence.

15 Q Okay. I see. Just limbs?

16 A Yes.

17 Q Okay. We're going to get to that as we go
18 here. Okay.

19 So even at the time Paul was injured,
20 there were still 13 trees on the property?

21 A Yes.

22 Q But there were less limbs on the property, I
23 take it then --

24 A Yes.

1 Q -- at the time of Paul's accident?

2 A Yes.

3 Q All right. Who took down those three trees
4 on your parents' property after Paul's accident?

5 MR. BARCH: I'm going to object to the relevance,
6 but go ahead.

7 BY THE WITNESS:

8 A Please reask the question.

9 Q All right. You said there were -- You said
10 there are ten trees now on your parents' property?

11 A Yes.

12 Q And you said at the time of Paul's accident
13 there were 13 trees on the property?

14 A Yes.

15 Q So I'm assuming three trees were taken down;
16 is that right?

17 A Yes. Two were only related to that
18 occurrence, though, and they were pine trees. The
19 other tree that I'm saying is gone was an apple tree
20 that was removed later by, I think, Bill. It was just
21 a small little apple tree that was --

22 Q All right. Hold on. You're going way too
23 far with my question.

24 A Okay.

1 Q My question is --

2 A Sorry for being all-inclusive.

3 Q It's okay.

4 A I know. I'm just apologizing.

5 Q No, you don't have to apologize, and let me
6 just give you kind of an idea. You're being helpful
7 and open, and I appreciate that. The thing is,
8 though, I'm still going to have to go through those
9 questions again as I go through this so it's not going
10 to cut down the time. So I'm just trying to tell you.

11 A I'm in no hurry.

12 Q Okay. The three trees that were taken down
13 since Paul's accident -- we'll get to when and all,
14 who and all that -- who took those three trees down?

15 A I don't know.

16 Q Okay. Okay. Before the day of Paul's
17 accident, so before June 28, 2011, had you known Paul
18 ever to operate a chain saw?

19 A Yes.

20 Q Okay. How frequently?

21 A I don't know.

22 Q How did you know then if he operated a chain
23 saw?

24 A I've seen him operating a chain saw.

1 Q Where?

2 A Camping, on his property, cutting telephone
3 poles that he got for free to make use out of them.

4 Q Okay. Had you known him to operate a chain
5 saw before the day of his accident in a fairly
6 reasonable manner?

7 A Yes.

8 Q He wasn't, like, dangerous swinging it around
9 or anything like that?

10 A No.

11 Q Okay. So he would operate it, would you say,
12 in a safe manner before the day of the accident?

13 MR. BARCH: I'm going to object to --

14 BY THE WITNESS:

15 A I'm not qualified --

16 MR. BARCH: Let me object to the foundation.

17 But go ahead and answer.

18 BY THE WITNESS:

19 A I'm not really qualified to determine what
20 safe is, I mean ...

21 Q Everyone has their own definition. I'm just
22 asking you under your own belief of what safe is --

23 A Yes.

24 Q Let me finish the question. Under your own

1 belief of what safe is, do you believe Paul operated
2 before the day of his accident, whatever times you saw
3 him, the chain saw in a safe manner?

4 A Yes.

5 Q Okay. Had Paul ever seen you operate a chain
6 saw before the day of his accident?

7 A Yes.

8 Q Where was that?

9 A Multiple times camping and also on my
10 mother's property.

11 Q Well, let's go back then because when I asked
12 you how many times you operated the chain saw after
13 2004, you only described one time on your mother's
14 property and that was on the day of the accident.

15 A Does operating -- to clarify it -- include
16 starting or actually cutting wood? Because there's --

17 Q Fair question but you didn't -- you didn't
18 condition it when I asked you that before so that's
19 why I'm going back.

20 A Okay.

21 Q We can -- I'm glad to define it any way you
22 want. I'm just -- You didn't clarify it before so
23 that's why I'm going back.

24 A Okay.

1 Q I asked you just recently, just the past
2 question, how many times had Paul -- I'm trying to
3 remember the question. How many times did Paul see
4 you operate a chain saw before the day of his
5 accident, right? I think that was the question. And
6 you said numerous times, I think; is that right?

7 A Yes. Paul has seen me operate a chain saw
8 before.

9 Q Before the day of his accident --

10 A Yes.

11 Q -- on numerous occasions?

12 A Yes.

13 Q Okay. And then you were describing when and
14 under what circumstances?

15 A Yeah.

16 Q In addition to camping, those different
17 camping trips, he would sometimes be on camping trips
18 with you?

19 A Yes.

20 Q And he would see you operate a chain saw
21 during those camping trips?

22 A Yes.

23 Q And you would see him operating a chain saw
24 during those camping trips?

1 A Yes.

2 Q Okay. And putting the camping trips aside,
3 had Paul ever seen you operate a chain saw any other
4 time before the day of his accident other than on
5 camping trips? And operate, if you want to know what
6 definition of operate is, I'm happy to tell you
7 that --

8 A Yes, please.

9 Q -- in my view but you can define it any way
10 you want. Operate means using the chain saw to cut
11 wood.

12 A No, starting a chain saw and making sure that
13 it's running. That operating I thought you meant it
14 running, not literally using it.

15 Q Okay. So let's -- Let me ask the question
16 again now that we have the definition.

17 A Okay.

18 Q If we define chain saw operation as operating
19 a chain saw so as to cut wood or cut any other object
20 I guess for that purpose, have you now, based on that
21 definition, ever -- has Paul ever seen you operate a
22 chain saw before the day of his accident other than at
23 camping trips?

24 A No.

1 Q Okay.

2 A No. No.

3 Q But when I've asked you about you seeing Paul
4 operate a chain saw, you meant and referred to him
5 using the chain saw to cut things, right, that was
6 your answer?

7 A I've seen him using a chain saw to cut
8 things, yes.

9 Q Yeah, okay.

10 A Yes.

11 Q So before the day of Paul's accident, setting
12 aside the camping trips, Paul has seen you start a
13 chain saw to get it running but not use it?

14 A Yes.

15 Q Okay. Under what circumstances?

16 A It's good to start a piece of machinery every
17 now and then and you may --

18 Q Where and when? What are we talking about?
19 At your mom's house?

20 A Yeah, probably in the garage there at my
21 mom's house.

22 Q Because they had the chain saw?

23 A No, they didn't have the chain saw then.

24 I'm -- You're talking about the chain saw that was in

1 the accident?

2 Q Okay. Let's go back.

3 A Or are you talking about chain saw in
4 general?

5 Q Fair enough. Let me ask it this way: Did
6 your parents purchase a chain saw to cut trees in
7 2011?

8 A I don't know.

9 Q All right. The chain saw that you were
10 operating --

11 A Yes.

12 Q -- at the time of Paul's accident was your
13 parents' chain saw, right?

14 A Correct.

15 Q When did they purchase that chain saw?

16 A Shortly before the incident.

17 Q Are we talking if the accident happened
18 June 28th, sometime in June?

19 A I wasn't there for the purchase. I wouldn't
20 know the purchase date.

21 Q Okay. Sometime that summer, though; fair
22 enough?

23 A Yes.

24 Q Okay. And before they purchased that chain

1 saw in the summer of 2011, did your parents own any
2 other chain saws to your knowledge?

3 A No.

4 Q Okay. So the chain saw that Paul would have
5 seen before the day of his accident, see you start but
6 not operate, would be the chain saw that your parents
7 purchased in 2011 or some other chain saw?

8 A It would be some other chain saw.

9 Q Where? Putting aside the camping trips,
10 remember I talked, putting aside that.

11 A Yes, in my mother's garage.

12 Q Whose chain saw was it?

13 A I don't even recollect. I, you know ...

14 Q Okay.

15 A It was a piece of machine I was starting to
16 keep it in good working order.

17 Q Okay. But it wasn't your parents and it
18 wasn't yours?

19 A That's correct.

20 Q Okay. How many times did he see you start a
21 chain saw but not use it under your description
22 before?

23 A I don't know.

24 Q Couple, maybe two or three times?

1 A I don't know. I don't know.

2 Q Okay. At least once; fair enough?

3 A At least once, yeah.

4 Q Okay. All right. Have you ever used a chain
5 saw and operated a chain saw, meaning cut things for
6 money in your life?

7 A No.

8 Q And, I mean, whether through your employment
9 or through somebody just giving you money to do it,
10 you'd never done it for money; is that fair to say?

11 A That's fair to say.

12 Q Okay. The work you were doing, and we're
13 going to slowly get into that now, but the work you
14 were doing for your parents on the day of Paul's
15 injury, June 2011, was that work you were being paid
16 for or not?

17 A Yes, I was being compensated.

18 Q Okay. So doesn't that -- isn't that contrary
19 to the answer you just gave me then?

20 A No --

21 MR. CALLAHAN: I'd just object to form.

22 BY THE WITNESS:

23 A -- because you asked if I did it before that
24 incident.

1 Q No, I did ever. My word was ever, but I'll
2 say it again. Look it, I just want the truth. I
3 don't care. If you don't understand my question, I'll
4 restate it.

5 My question before, I think, if you
6 looked at the record, said had you ever operated a
7 chain saw for money. Now, maybe you meant before the
8 accident --

9 A Yes, I did.

10 Q -- but I didn't phrase it that way.

11 A Okay.

12 Q So let's go back and correct it. Okay. We
13 can do that.

14 The question is, ever means in your
15 lifetime. Have you ever operated a chain saw for
16 money in your lifetime?

17 A Yes.

18 Q Okay. And was that -- the times you did it
19 for money, was that only with your parents?

20 A That one, yep, the occurrence that we're
21 speaking of, that was the only time that I was paid.

22 Q The day of the accident?

23 A The day of the accident.

24 Q All right. Okay. Before the day of the

1 accident, had you ever cut -- Strike that. Let me --
2 Let me get ...

3 Before the day of your accident, had you
4 ever cut any trees down with a chain saw or limbs,
5 parts of trees, with a chain saw at your parents'
6 house? Before the date of --

7 A Reask that question.

8 Q Pardon?

9 A Could you please reask that question?

10 Q Okay. Before the day of Paul's accident --

11 A Yes.

12 Q -- had you ever operated a chain saw at your
13 parents' house, meaning to cut things?

14 A No.

15 Q Okay.

16 A No.

17 Q So the day of the accident was the first day
18 in your life you ever operated a chain saw to cut
19 things at your parents' house; fair enough?

20 A Yes.

21 Q Okay. All right. So I'm assuming, given
22 that answer, the same answer would hold true for Paul.
23 Paul never assisted and/or operated a chain saw to cut
24 things at your parents' house before the day of his

1 accident; is that fair to say?

2 A Yes.

3 Q Okay. And I want to make sure you caught
4 that I used the word assisted, meaning he never
5 assisted anybody, whether yourself or anybody else, in
6 the trimming of trees or cutting down of trees at your
7 parents' house before the day of his accident; is that
8 correct?

9 A That's correct.

10 Q Okay. Okay. Did Paul -- Well, let me ask it
11 this way: How frequent in the year before the
12 accident would Paul, to your knowledge, be visiting
13 your parents' house?

14 A At least twice a month.

15 Q And would it be only to visit with you or
16 would he be there sometimes when you wouldn't be
17 there, to your knowledge?

18 A He would be there when I wasn't there.

19 Q When you weren't there?

20 A Yeah.

21 Q What was his -- and that's what I'm not sure
22 about, what is his relationship with your parents that
23 would make him come to your parents' house when you're
24 not there, what's the --

1 A He would show up assuming that I was there
2 and knowing my mother since they worked at the same
3 place of employment, interacted there, that he would
4 sit and just speak with them on a friendly basis.

5 Q Okay. So he was good friends with your
6 parents?

7 A Yes.

8 Q Okay. Do you know if your parents still hold
9 goodwill to him today or whether that has changed?

10 MR. BARCH: Speculation.

11 BY THE WITNESS:

12 A I don't know. You'd have to ask them.

13 Q Do you know if your parents have overheard
14 Paul say anything that was uncomfortable or
15 financially motivated relating to this claim at all?

16 A No, I believe that they have not.

17 Q Okay. And same with your wife? I think we
18 already talked about that, right?

19 A Correct.

20 Q Okay. Would Paul have any reason, in your
21 knowledge, to visit your parents when you weren't
22 there? Now, I know he'd go there and you happened not
23 to be there so he'd talk to them; but, I mean, was
24 there anything that would take him to your parents'

1 house if he knew you weren't going to be there?

2 MR. BARCH: Speculation.

3 BY THE WITNESS:

4 A A friendship.

5 Q Go ahead.

6 A Friendship again.

7 Q Okay. So would there be times Paul would
8 visit your parents' house merely to visit them and not
9 even -- whether you're there or not?

10 A No, he would arrive there with the purpose of
11 seeing me and me not being there, he would stay being
12 congenial and friendly towards my mother.

13 Q Okay. And that's why I asked the other
14 question; let me say it again. My question is, if
15 Paul knew you weren't going to be at the house, would
16 there be any -- ever any instance where you know that
17 he would visit your parents' house anyway?

18 A That would be between Paul and my parents
19 then.

20 Q So you don't know?

21 A I don't know.

22 Q Okay. That's what I was trying to get at.

23 A Okay.

24 Q Okay. Do you know if Paul ever worked at

1- your parents' house doing anything before the day of
2 his accident?

3 A Yes.

4 Q What types of things would he do at your
5 parents' house for work?

6 A Well, there was a large elm tree that was
7 removed in the front yard by another provider; I do
8 not know their name, and he said, I would like that
9 firewood. So I helped him load it onto a large
10 trailer and I believe that large pile of wood still
11 sits on his property.

12 Q Okay.

13 A To some extent. He's used some of it.

14 Q What year would that have been?

15 A Just 2010.

16 Q Okay.

17 A Just before this incident where she was
18 getting into the mode of upgrading the home, you know.

19 Q I get it. So it would have been the summer
20 before this accident then?

21 A Yes.

22 Q Okay. So --

23 A Or it may -- it may have been that same
24 summer.

1 Q Okay.

2 A That question would probably be better off
3 answered by my mother.

4 Q So the answer is, I don't know the time,
5 that's your answer when that happened? You don't know
6 when that happened?

7 A It was before this occurrence and shortly
8 before that.

9 Q Okay. But the work that you're describing in
10 that answer that Paul did at your parents' house
11 before the day of his accident was simply to collect
12 wood that had already been cut up and pile it onto a
13 truck to take it to his house?

14 A Correct.

15 Q Okay. So I guess my question was more
16 designed toward did Paul do any work for your parents
17 or for the property itself at your parents' property?

18 A Yeah, he --

19 Q Before the day of his accident?

20 A Yes, he moved a large load of wood onto a
21 trailer removing it from their property for his own
22 usage.

23 Q Okay. Just once?

24 A That day was the -- That day we made several

1 trips.

2 Q What day?

3 A I don't know exactly what day, that's what
4 was in dis- -- and we were uncertain of as to right
5 there but it was before this occurrence possibly that
6 same summer.

7 Q All right. So this is what you're saying,
8 you're saying before Paul's accident --

9 A Yes.

10 Q -- whether that year or the year before,
11 there was an instance where an elm tree was cut down
12 and Paul made one or more trips to collect the cut up
13 wood on a pickup truck to take to his house?

14 A Correct.

15 Q Other than that, has Paul done any other work
16 on your parents' house before the day of his accident?

17 A None that I'm aware of.

18 Q Okay. Do your parents have any experience or
19 expertise in cutting down trees?

20 A No.

21 Q Okay. So other than hauling firewood from
22 your parents' house on one or two occasions before the
23 day of his accident, Paul never did any other type of
24 errands around their house, the parents' house; is

1 that fair to say?

2 MR. BARCH: Foundation, but go ahead.

3 BY MR. MAST:

4 Q That you know of obviously.

5 A That I know of.

6 Q None?

7 A That I know of, none.

8 Q Okay. How long have your parents lived at
9 that house?

10 A My mother, biological mother, has lived there
11 since 1971.

12 Q And give us the address of the house so we
13 could have that.

14 A 1016 West Elder, McHenry, Illinois 600, I
15 think it's, 51 now. It may have changed.

16 Q Okay. And is that once -- And that's --
17 After your father passed, that's where she was
18 remarried and began to live there then, correct?

19 A She was remarried be- -- No, she was
20 remarried before his passing.

21 Q I see.

22 A Yeah.

23 Q Okay. So until you moved out of the house,
24 you had lived at that house almost your entire

1 childhood, right?

2 A I lived there until I was 30 years old.

3 Q Okay.

4 A 29. 29. 29 years old. 1999 June 1st I
5 moved to my new residence, which I currently live at.

6 Q From your -- From about four years old,
7 right?

8 A Yeah.

9 Q Okay.

10 A Yes.

11 Q All right. And let's take you to the day of
12 the accident. When were you first -- Well, strike
13 that.

14 On the day of the accident, on the day
15 the accident occurred, came upon you, did you already
16 know your parents had purchased a chain saw?

17 A Yes.

18 Q Okay. And do you know the purpose of why
19 they purchased it?

20 MR. CALLAHAN: I'd just object as being asked and
21 answered.

22 But you may answer.

23 BY THE WITNESS:

24 A I don't know. I don't know.

1 Q Okay. When did you first know that they
2 wanted you -- your parents wanted you to cut -- do
3 some cutting with the chain saw on their property?
4 When did you first learn that?

5 A Actually, I offered my services to them.
6 They had need to rebuild a shed and with the shed
7 down, there was an opportune time for trees to come
8 down.

9 Q What shed down, what do you mean?

10 A There was an old shed that if -- since it was
11 taken down because it was in disrepair, planning to
12 put up a new one, there was an opportunity to now drop
13 these trees where there was a clear field, clear area.

14 Q Fair enough. When was that that you offered
15 your services to cut the trees down?

16 A Two days before the occurrence.

17 Q Okay. Were you at their house when this
18 conversation arose?

19 A Yes, I was.

20 Q Okay. Was Paul with you?

21 A No.

22 Q It was just you and your two parents?

23 A Yes.

24 Q And it was discussed -- Did you bring up the

1 issue or did they bring up the issue?

2 A Well, as I've mentioned, it was an ongoing
3 upgrading of the property and it was just discussed
4 that now is an opportune time to do that.

5 Q My question was, who brought up the issue, if
6 you know, about cutting the trees down?

7 A I did.

8 Q Okay. And it was something like, Hey, now's
9 a good time with the shed down, why don't we cut those
10 trees down?

11 A Yes.

12 Q Something like that. Okay. And there were
13 three trees in particular that were --

14 A Two.

15 Q All right. Let me just finish the question.
16 My question was, there were three trees in particular
17 to cut down and you're saying there were only two?

18 A There are three trees that since that
19 occurrence are now gone.

20 Q Right.

21 A Two of which were involved in the occurrence
22 which were pine trees.

23 Q When you say involved in the occurrence, what
24 do you mean?

1 A The ones that were being trimmed up, that
2 were being considered to be removed at that time.

3 Q Okay. So let's go back to the conversation
4 two days before Paul's accident when you brought up
5 the issue of cutting the trees down, was the topic of
6 cutting the trees down involving only two trees at
7 that point?

8 A Yes.

9 Q And they were pine trees?

10 A Yes.

11 Q Okay. And how tall were the pine trees?

12 A I would -- In my best guesstimate, I would
13 say 50 feet tall.

14 Q Both of them?

15 A Yes.

16 Q And they had been on the property ever since
17 you knew?

18 A Yes. I watched my mother plant them herself.

19 Q Oh, okay. So when you were a very young
20 child?

21 A Yes.

22 Q Okay. And what necessitated that they be
23 removed given the rebuilding of the shed?

24 A At that time they had become large and an

1 overburden.

2 Q Just taking up a lot of space --

3 A Yes.

4 Q -- and in the way?

5 A Yes. Hanging over the area adjoining
6 neighbors. They were a nuisance. They needed to come
7 down. They weren't decaying at all, but they were --
8 they were too full.

9 Q So would the trees have been about over
10 25 years old then at the time?

11 A Yes. Yes.

12 Q But they were in good health?

13 A Yes.

14 Q So it was elective in taking them down, not a
15 necessity, correct?

16 A It was a necessity as to -- Well, that was
17 the opportune time. I mean, as I said, the shed was
18 gone, so ...

19 Q I get it. I'm saying elective meaning that
20 they didn't have to be taken down for the safety of
21 anybody, they were being taken down more for
22 convenience's sake; fair enough?

23 MR. CALLAHAN: If you know.
24

1 BY THE WITNESS:

2 A I don't know. I don't -- I don't really know
3 at what point they chose to. I suggested that they
4 come down and they chose to have me take them down.

5 Q Were they being taken down for any safety
6 reason?

7 A No.

8 Q Okay. The third tree, what kind of -- The
9 third tree that was taken down after Paul's accident,
10 what kind of tree was that?

11 A It was an apple tree.

12 Q And that tree being taken down, at least in
13 your view, had nothing to do with the shed issue then,
14 right?

15 A Nothing at all.

16 Q Right?

17 A Yes.

18 Q Okay. And that's why you described earlier
19 in the deposition the two trees, the two pine trees,
20 were taken down in relation to this accident because
21 you were taking trees down at the time of the accident
22 or at least the intent was to take trees down at the
23 time of the accident to make room for the shed?

24 A No, the shed was already standing before

1 that. It was torn down because it was in disrepair.
2 It being torn down, it seemed as though it was an
3 opportune time to take down these trees that were
4 large and overgrown.

5 Q Okay. So you said, Hey, why don't we take
6 down the trees now. It's a good time to take down the
7 two trees, and they said yes, right?

8 A Yes.

9 Q Okay. Did you tell them how long it would
10 take to do the work?

11 A No.

12 Q Did they offer you to pay you -- Did they
13 offer to pay you some money to take the two pine trees
14 down?

15 A Yes.

16 Q How much?

17 A It was a matter of hourly wage, \$15 an hour.

18 Q Was there any scope discussed as far as how
19 long it was going to take you to do the work?

20 A No.

21 Q Any time frame on how long it would take you
22 to do it?

23 A No.

24 Q And the scope of the work that at least as

1 discussed was just taking the two pine trees down,
2 correct?

3 A Yes.

4 Q All right. And that would include the limbs,
5 cutting it up into wood, and then hauling it off the
6 property?

7 A Not hauling it off the property; that's why I
8 was cutting up the limbs to stack it on the property.

9 Q Okay. So that -- Just fair enough. I just
10 want to get the scope of it. The scope was cutting
11 the tree down, including all limbs and parts of the
12 trees, the two trees, and getting them cut up into
13 stacks and then stacking the wood?

14 A Yes.

15 Q And then that would be the end of the work?

16 A Yes.

17 Q Okay. And it only involved those two pine
18 trees, right?

19 A Yes.

20 Q Are you aware of any photographs that show
21 those pine trees before they were cut?

22 A No.

23 Q Or during them being cut?

24 A No.

1 Q Or after they were cut?

2 A No.

3 Q Or how they are today?

4 A No.

5 Q Okay. Once you discussed two days before
6 Paul's accident doing the work and how much you were
7 going to get paid, what was the next step in your
8 preparation for doing the work?

9 A I by myself trimmed the trees up to about
10 40 --

11 Q No. No. You went -- You jumped too far
12 ahead. Let me just -- I said the next step. So the
13 next step would be two days later showing up on the
14 property, getting ready to cut them off then, I'm
15 assuming, right?

16 A Mm-hmm.

17 Q Yes?

18 A Yes.

19 Q Did you do anything in the interim to
20 prepare, like go buy a set of gloves or something?
21 I'm just trying to find out what you had to do.

22 A No.

23 Q Okay. When you cut trees of this size and
24 nature down, do you have to wear goggles?

1 A I suppose that a person should.

2 Q Did you?

3 A No.

4 Q Did you wear a helmet?

5 A No.

6 Q Gloves?

7 A Yes. Yes.

8 Q Okay. Work gloves?

9 A Yes.

10 Q Boots?

11 A I can't recollect if I was wearing boots or
12 shoes that day.

13 Q Okay. Any other type of particular things
14 that you would wear specific to cutting trees down?

15 A No.

16 Q Other than gloves and clothes?

17 A No.

18 Q No. Okay.

19 Who decided the day that you were going
20 to start the work?

21 A I did.

22 Q Okay. Did you just show up out of the blue
23 or did you say, I'll be back in two days to start the
24 work?

1 A I said that I'll be back and start the work
2 on a pre- -- on the day, you know, the day I began --

3 Q Okay.

4 A -- which is two days before Paul's -- the
5 incident happened.

6 Q Right. So we're two days before the
7 accident, you talked about what you were going to do,
8 how much it was going to cost, blah-blah-blah, and
9 then did you say, I'll come back in two days to start
10 the work, or how was it decided when you were going to
11 start the work?

12 A It's my mother. It's kind of a free -- You
13 know, it isn't like I've got to show up for work at
14 10:00 o'clock. It wasn't really decided. I showed up
15 at my own accord and began to work.

16 Q That's all I'm asking you.

17 A And then I --

18 Q That's fine. So you showed up when you
19 wanted to, right?

20 A Yes.

21 Q Okay. So there wasn't any preset day that
22 you were going to start the work?

23 A No.

24 Q Is that correct?

1 A That's correct.

2 Q Okay. And when you showed up on June 28,
3 2011, was that the only thing you were going to do
4 there that day at your parents' house is cut those two
5 trees down?

6 A That day that I showed up, I was only going
7 to trim the branches off of the trees.

8 Q Prepare them for, like, the next day's work
9 of starting to cut them down?

10 A Yes.

11 Q Okay. Were there a lot of branches on each
12 tree?

13 A Yes, it's a pine tree.

14 Q Okay.

15 A There's many branches on pine trees.

16 Q And the branches can get thick as well,
17 right?

18 A Thick by way of ...

19 Q By way of being just thick.

20 A Diameter?

21 Q Yeah.

22 A No, not really. Branches --

23 Q I mean, we're not talking like a half an inch
24 around. We're talking they can be several inches

1 around even on the branches.

2 A There were no limbs on that tree that were
3 probably over 3 inches in diameter.

4 Q Okay. Fair enough. Let me ask that then,
5 just it sounds like you have some understanding. Of
6 the two trees, how many trees would you say were about
7 3 inches in diameter on both trees?

8 A How many branches?

9 Q Were 3 inches in diameter at one side or one
10 end?

11 A Between the two trees?

12 Q Yep.

13 A Six.

14 Q Okay.

15 A The lowermost were the thickest.

16 Q And were you going to start at the bottom and
17 go up or start at the top and go down?

18 A Start at the bottom and go up.

19 Q Okay. So if the first day of work -- And
20 that was the day Paul was injured, the first day of
21 work, right?

22 A No. The first day of work that I performed
23 on those trees was the day before Paul showed up. I
24 had already cut down all the limbs off the trees.

1 Q All right. Hold on. You're going too fast
2 so --

3 A Okay.

4 Q -- let's slow down a little bit. You showed
5 up two days after speaking to your parents to work so
6 that would have been the day before Paul's accident?

7 A Yes.

8 Q Okay. So that would have been the 27th?

9 A Yes. It was preparatory work, you know ...

10 Q I understand that, but I want to go step by
11 step. So on June 27 you show up at your parents'
12 house?

13 A Yes.

14 Q Which is two days after you first talk to
15 them about this and you showed up to do the
16 preparatory work?

17 A Yes.

18 Q Okay. And how long were you on their
19 property that day, on the 27th?

20 A Four hours.

21 Q And what did you do during that four hours on
22 the 27th?

23 A I trimmed branches up to about 40 feet on
24 both trees.

1 Q Up?

2 A Up. From the bottom going up.

3 Q You've got to let me -- We've got to go back
4 and forth with this because I'm not going to
5 understand you. You're saying from the ground up
6 40 feet high you trimmed all the trees off of those
7 two trees -- all the branches off those two trees on
8 June 27th?

9 A Yes.

10 Q And they were now all on the ground, those
11 limbs?

12 A Yes.

13 Q Correct?

14 A Yes.

15 Q How many limbs are we talking?

16 A I don't know.

17 Q Like 30, something like that?

18 A I would say more than that. You're talking
19 about 40 or 50 feet and if a pine tree has a limb at
20 every foot or so, you can pretty much figure out it
21 probably would be more like hundreds.

22 Q Hundreds of limbs?

23 A Yeah.

24 Q Okay. Varying sizes?

1 A Yes.

2 Q Okay.

3 A Decreasing in diameter as we went higher, of
4 course.

5 Q Okay. And did you work by yourself on that
6 day, the 27th?

7 A Yes.

8 Q So Paul was not on the property on that day,
9 correct?

10 A Correct.

11 Q By the time you were working on the property
12 on June 27th, 2011, did Paul know the work you were
13 doing?

14 A I don't know.

15 Q Okay. When did you first talk to Paul about
16 what work you were going to do on your parents' house
17 with these trees in June?

18 A On the 28th I had made my travels to my
19 mother's house after doing the preparatory work on the
20 27th, and I figured that Paul, since he was sitting
21 idle and unemployed and we worked together on trees
22 before, that he would possibly want to give a hand in
23 helping me to get rid of the scrub that was already on
24 the ground.

1 Q So you called him?

2 A I stopped by his home.

3 Q Before getting to your parents' house?

4 A Yes.

5 Q And was Paul home?

6 A Yes.

7 Q And did you say, Hey, I'm cutting some trees
8 down at my parents', do you want to help clean some of
9 it up?

10 A That's what I said.

11 Q Okay. Did you say anything else differently
12 than what I've just said?

13 A No, basically would you like to give a hand
14 at my mother's property to help me clean up the brush
15 I cut down.

16 Q Now, my assumption, you can correct me if I'm
17 wrong, but at least that conversation at Paul's house
18 the day of his accident, my assumption is you weren't
19 asking him to help you cut the tree down, but you were
20 helping him deal with what was already cut?

21 A Yes.

22 Q Okay.

23 A Our intentions that day were not to take the
24 trees down; it was to clean up the brush on the ground

1 itself that I already cut the day before.

2 Q Was your intention on that day, the 28th, to
3 do any use of the chain saw?

4 A Yes.

5 Q Okay. You were going to cut up the limbs
6 that were already on the ground?

7 A Yes.

8 Q Had you begun to cut any of the limbs on the
9 ground the day before?

10 A The larger ones I had already cut on my own
11 into sections.

12 Q On the 27th?

13 A On the 27th, yeah.

14 Q Okay.

15 A And then realized I'm going to need help.

16 Q Okay.

17 A You know, there's a lot here.

18 Q So the 27th now, the four-hour work you --

19 A Yeah.

20 Q -- the four-hour work you did on the 27th
21 included trimming up 40 feet on each tree and then
22 trimming up some of the larger limbs that are on the
23 ground now cutting them up?

24 A Yes.

1 Q Okay. Then you get to the 28th and realize
2 this is a pretty big amount of work to do, you could
3 use some help?

4 A Yes.

5 Q Okay. And what specific task did you expect
6 Paul would be needed to do at your parents' house when
7 you spoke to him that morning before going to the
8 house?

9 A There was really no outline. I just simply
10 went to a friend's house and asked him if he'd like to
11 help me with my chores that I was doing that day. I
12 told him it was brush that was on the ground, and I
13 would like to cut it up for firewood or just to get --
14 consolidate it into a pile so it could be stacked.

15 Q Were you planning on him using the chain saw
16 at all?

17 A No.

18 Q Okay. You were going to be the one to use
19 the chain saw?

20 A Yes.

21 Q And did he ever use the chain saw that day?

22 A No.

23 Q Okay. And I mean the day of his accident, he
24 never used a chain saw?

1 A Correct, he did not use the chain saw on the
2 day of his accident.

3 Q Okay. All right. Now, when you use the word
4 brush, having Paul help you clean up brush, you mean
5 the limbs that are on the ground that you cut the day
6 before, right?

7 A Yes.

8 Q Okay. Not just a bunch of leaves and stuff.
9 It was the limbs, the actual limbs themselves?

10 A The actual limbs, yes.

11 Q So the assistance that Paul was going to give
12 since he wasn't going to be using the chain saw the
13 day of his accident, was that to hold the limbs while
14 you cut them up?

15 A It wasn't intended to be that way and I
16 didn't direct him to do so. We just kind of got to
17 work and that's the technique that we both were
18 comfortable with --

19 Q Okay.

20 A -- and then from there moved forward with
21 doing that.

22 Q Fair enough. So the morning of Paul's
23 accident before you got to your parents' house when
24 you went to Paul's house to talk to him, you didn't

1 talk details, you just said, Hey, Paul, I need some
2 help cutting up some brush at my parents' house, can
3 you give me a hand?

4 A Yes.

5 Q Okay. And he said yeah?

6 A He said yes.

7 Q Did you work on any arrangement where he
8 would get paid or was it just for him to volunteer?

9 A At that time there was no questions about
10 money.

11 Q Okay. What was your assumption then, if you
12 had any?

13 A That maybe we can get the job done before the
14 day was over.

15 Q So all the limbs that you had already cut
16 that were on the ground, which you described as maybe
17 hundreds, hundreds in plural --

18 A Mm-hmm, right.

19 Q -- you were hoping to at least get those all
20 cut up that day?

21 A Yes.

22 Q Okay. And what was your assumption as far as
23 what, if anything, you were going to pay Paul, if you
24 were going to pay him anything? I don't know.

1 A Equal to what I was being paid, \$15 an hour.

2 Q Oh, so your parents were going to pay now
3 both of you \$15 an hour?

4 A I was assuming that they would.

5 Q Okay. Did they ever agree to before Paul's
6 accident?

7 A No.

8 Q Okay. Had you ever talked to Paul about that
9 arrangement before his accident?

10 A No.

11 Q Okay. That was just your -- kind of your --

12 A Yeah, I was going to --

13 Q Hold on. Hold on. Let me finish the
14 question. That was just your kind of own assumption?

15 A Yes.

16 Q Okay. Did Paul leave with you to go to your
17 parents' house or did he come at a different time in a
18 different vehicle?

19 A He came about a half-hour after I had asked
20 him to in his vehicle. Could have been more.

21 Q Okay.

22 A Somewhere between a half-hour and an hour
23 before he arrived.

24 Q Fair enough. What time did you arrive at

1 your parents' on the day of Paul's accident on the
2 28th?

3 A 10:00, 11:00 o'clock. Before noon.

4 Q Okay.

5 A That's the best I can recollect.

6 Q Okay. And how long did you anticipate it was
7 going to require both you two to cut up these trees as
8 you said completely?

9 A I have no --

10 Q These limbs. I'm sorry.

11 A I had no estimate in my mind or need to
12 construct one. I just was going to work with a friend
13 and get the job done.

14 Q Okay. Were you expecting, though, that it
15 would be done that day?

16 A I was hoping. I wasn't expecting.

17 Q Okay. Okay. So if you arrived from 10:00 to
18 11:00 sometime that day of Paul's accident, you're
19 saying Paul would arrive somewhere around 10:30 to
20 11:30?

21 A Yes.

22 Q And he arrived alone in his car?

23 A Yes.

24 Q Okay. And we're going to have to use some

1 kind of time frame that we can agree on even though
2 we're not sure just so that we can do the
3 chronological order of things here. So if we assume
4 that -- and, again, I know this is just an assumption
5 but just for the purposes of figuring out when things
6 happened, if we assume you arrived at 11:00 and Paul
7 arrived at 11:30, okay?

8 A Mm-hmm.

9 Q All right?

10 A Yes.

11 Q How soon after Paul arrived at 11:30 would
12 his accident have occurred?

13 A I believe about an hour.

14 Q So if he arrived at -- If Paul arrived at
15 11:30, his accident happened around 12:30; fair
16 enough?

17 A Yes. Or if arriving at 10:30, the accident
18 happened at 11:30.

19 Q I get it. I get it. We can do that, I'm
20 just -- I want to get the chronological time frame.
21 So if we assume you get there at 11:00, Paul got there
22 at 11:30, his accident happened around 12:30; fair
23 enough?

24 A Yes.

1 Q Okay. And when Paul's accident occurred, he
2 was in the midst of helping you cut up these trees,
3 right?

4 A Yes.

5 Q Okay. Other than you and -- Were you also in
6 the midst of cutting down -- helping cut up the trees?

7 A Yes, I was -- Yes, when he showed up, I was
8 already in the process of working.

9 Q All right. So when Paul's accident occurred,
10 both of you were working together to cut up these
11 trees?

12 A Yes.

13 Q Was anyone else working with you two?

14 A No.

15 Q Was anyone else watching you two?

16 A No.

17 Q Were your parents in or out of the house
18 during the time that Paul had arrived up to the time
19 of his injury?

20 A They were in the house.

21 Q Okay. Do you know if your parents even knew
22 Paul was over?

23 A Yes, they did because when I arrived I told
24 them that Paul would be coming over to help me.

1 Q Okay. And that's fine but that's not quite
2 what I was asking. Do you know if your parents knew
3 he was actually on the property at the time of the
4 accident?

5 A Yes, they did know that he was on the
6 property.

7 Q How did they know that?

8 A Because his vehicle was parked outside and
9 they could visually see that his vehicle was there.

10 Q Okay. And they can connect the dots; I get
11 it.

12 A They see him. Okay. Sorry.

13 Q I can't talk while you're talking. Let me --

14 A I know.

15 Q My question was, at the time of Paul's
16 accident do you know if your parents were aware that
17 he was on their property? Even they could have looked
18 out and saw the car, I get it, but do you know if they
19 were aware?

20 A I don't know.

21 Q Okay. Do you know anyone that was aware Paul
22 was on your parents' property at the time of his
23 accident other than you?

24 A No, I do not know.

1 Q Okay. Were there any visitors or witnesses
2 to the work on the property at your parents' house for
3 the hour Paul was there leading up and at the time of
4 his accident?

5 A No.

6 Q Okay. So the only witnesses you're aware of
7 of the circumstances leading up to the accident and
8 Paul's accident itself, the only witnesses to that are
9 you and Paul, right?

10 A Correct.

11 Q Okay. All right. Now, I've got to ask a few
12 questions that -- don't take it personally but these
13 are just questions we always ask in these depositions
14 of witnesses, okay? So it's nothing against you, it's
15 just we always ask these.

16 Any alcohol to drink that day?

17 A I don't drink alcohol.

18 Q Okay. Any medications?

19 A None.

20 Q Any drugs anyway?

21 A No.

22 Q Any type of drugs?

23 Paul, same question for Paul, if you
24 know, drugs, alcohol?

1 A Paul's not a drinker to my knowledge, and I
2 wouldn't know about any prescribed drugs because I'm
3 not him.

4 Q Okay. Did Paul seem to be acting normal
5 leading up to the time of his accident?

6 A Yes.

7 Q Were you having any internal stressors or any
8 problems internally for you at the time of this?

9 A No.

10 Q Okay. Were your parents keeping any type of
11 watch over the work you were doing to kind of see how
12 things progressed?

13 A No.

14 Q Okay. So the -- from the beginning to the
15 end, the work that was being done by you to cut the
16 trees up was done under your own supervision, under
17 your own control?

18 A Under my supervision.

19 Q Yeah. Was anybody telling you what to do and
20 how to do it?

21 A No.

22 Q Were your parents in any way telling you how
23 to do things as far as cutting up the trees?

24 A No.

1 Q How you did it, the method and means for
2 cutting up the trees, was that done under -- by your
3 own control and your own decisions?

4 A By my own decisions.

5 Q Okay. The manner in which the work was being
6 done at the time of this accident, was that done in
7 the manner that you wanted it to be done?

8 A Until Paul arrived.

9 Q Okay. How about when Paul arrived, did he
10 change things?

11 A He chose -- He chose to take up his own
12 technique or helping, and I went along with it because
13 we worked together in a good fashion for so many years
14 previous to that.

15 Q Leading up to the time of his accident, okay,
16 was Paul doing anything wrong working at the property?

17 A No.

18 Q Okay. Was he doing everything appropriately?

19 A It seemed so.

20 Q Okay. And did you have to criticize him or
21 instruct him to do things differently because you were
22 not happy with the way Paul was doing his work leading
23 up to the time of his accident?

24 A No, I gave no instruction basically to him.

1 Q You left it up to him to do the best for him
2 and you did the best for you?

3 A We've worked well together in the past.
4 There was no need for instructions. It was a mutual
5 understanding of two men working together.

6 Q Okay. But is my question correct, you left
7 Paul to work appropriately under his own control and
8 you were to work appropriately under your own
9 control --

10 A Yes.

11 Q -- correct?

12 A Yes.

13 Q Okay. And leading up to the time of Paul's
14 accident, did you notice Paul doing anything unsafe or
15 wrong in your view?

16 A No.

17 Q Leading up to the time of the accident, did
18 you believe you were doing anything unsafe or wrong in
19 the process of the work leading up to Paul's accident?

20 A No.

21 Q Okay. When Paul was -- Well, Paul was
22 eventually cut by your chain saw, correct?

23 A Paul was cut by a chain saw.

24 Q A chain saw that you were using and

1 operating, right?

2 A Correct.

3 Q Okay. I said your chain saw and you're
4 probably saying well, it wasn't my chain saw; that's
5 what you're thinking, right?

6 A That's correct, yeah.

7 Q Okay. But it was -- When I meant your chain
8 saw, I meant the chain saw you had control of,
9 correct?

10 A Then that's what I'll agree to, yes.

11 Q All right. So you're agreeing and accepting
12 the fact that Paul was, during the process of working
13 at your parents' house, cut by a chain saw while you
14 were holding the chain saw and while it was running,
15 correct?

16 A Yes.

17 Q Okay. And -- Oh, here it is. I was looking
18 all around for these; they're right in front of me.

19 These photographs were marked during
20 Paul's deposition, okay? All right?

21 A (Nodding.)

22 Q You have to answer a word.

23 A Yes.

24 Q All right. Do you know, without looking at

1 the photograph, where Paul was cut by the chain saw
2 you were operating at the time of his accident on
3 June 28, 2011, on his body, where?

4 A Yes, exactly where.

5 Q Where?

6 A On his right forearm.

7 Q Okay.

8 A (Indicating.)

9 Q Is that the only place he was cut?

10 A Yes.

11 Q Okay. I'm going to show you a photograph. I
12 just want to make sure it's the same injury that he
13 talked about, okay?

14 MR. CALLAHAN: Can I take a look? Thanks.

15 BY MR. MAST:

16 Q We've got what's marked as Exhibits 2A, 2B,
17 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, okay?

18 A Yes.

19 Q These aren't all I'm going to ask you about
20 but the first page, 2A, does that appear to show his
21 right arm and the scarring where he was cut by the
22 chain saw you were operating at the time of his
23 accident?

24 A Yes.

1 Q Okay. Is that the only spot he was cut shown
2 in this photograph?

3 A Yes.

4 Q Okay. And maybe you can't tell on 2B, but I
5 think that's the same injury. Can you tell?

6 A Sure looks good to me.

7 Q Looks like the same one?

8 A Yeah.

9 Q Okay. How about 2C, does that look like the
10 same injury?

11 A Yes, it does.

12 Q 2D. If he has his hand down to his right, it
13 would be on the backside of the --

14 A Yes.

15 Q -- forearm, correct?

16 A Yes.

17 Q And that's where it shows on 2D?

18 A Yes.

19 Q And that's the injury that was caused by the
20 chain saw you were operating at the time of the
21 accident?

22 A Yes.

23 Q Okay. All right. So Paul arrived about a
24 half an hour to your parents' house after you arrived

1 on June 28, 2011, right?

2 A Yes, about a half an hour.

3 Q And by that time, when Paul arrived at your
4 parents' house, you had already been working?

5 A Yes.

6 Q Okay. So you had the chain saw in hand and
7 you were cutting things or not?

8 A No.

9 Q What were you doing?

10 A I was sorting.

11 Q You were what?

12 A Sorting the branches. When you have pine
13 trees, they get snagged, snarled, and tangled
14 together. I was placing them so that they could be
15 fed in a safe manner as, you know, to lift it up and
16 to work with it.

17 Q Okay. What was the manner which you wanted
18 to use to -- Well, strike that.

19 Having Paul come and assist you, did you
20 have an expected manner in which you preferred to have
21 him assist you?

22 A No.

23 Q So you just left it up to him to decide?

24 A Well, he showed up and as I had said, we just

1 worked well together. We understood one another.

2 Q But my question was --

3 A I didn't specifically have any expectations
4 or did I direct him to do anything.

5 Q So my question then was, did you just leave
6 it up to him to decide what to do and how to help you
7 or did you have to tell him, Hey, hold that branch.
8 I'll cut that branch?

9 A I left it up to him.

10 Q So how would he know what branch you wanted
11 to cut unless you told him what branch to cut?

12 A He didn't cut. He held.

13 Q How did he -- I'm sorry. I didn't say it
14 right. How did he know what branch to hold unless you
15 told him what branch to hold?

16 A I didn't tell him. He chose --

17 Q How would he know then is the question.

18 A You'd have to ask him. I don't know.

19 Q Well, was he supposed to just guess what
20 branch to hold on to?

21 A There was no guessing, but ...

22 Q How was he going to know then?

23 A Because we've done this before. We've
24 watched each other work. We've worked with tools

1 before in the past.

2 Q Okay. But that's not my question, okay?
3 We're hoping that he's going to hold the branch you're
4 going to end up cutting, right, the same branch?

5 A I never intended him to hold the branch.

6 Q Okay.

7 A He chose to hold the branches.

8 Q All right. So you're telling me -- Well,
9 what work were you wanting Paul to help you with then?

10 A There was moving material, there was stacking
11 wood, there was raking the ground.

12 Q Moving material, stacking what?

13 A Stacking wood.

14 Q Okay.

15 A And raking.

16 Q Was there a rake available?

17 A Was there a rake available?

18 Q Mm-hmm.

19 A Yes.

20 Q Okay. Stacking wood meaning after it's all
21 cut up into little foot pieces, you would stack them
22 up --

23 A Into 18 inch pieces.

24 Q -- to store them, correct?

1 A Into 18 inch pieces and then stack, yeah.

2 Q You're doing fine but please let me finish my
3 question before you get to the answer, okay, because
4 we're going to have a hard time if we don't have
5 separation, okay? So maybe give me one beat after I'm
6 done and then give me your answer, okay?

7 Moving material meaning what?

8 A Once it's cut, to stack it and then to clean
9 up the area where we were working.

10 Q All right. So moving material, stacking the
11 wood, and raking up the debris, those were the three
12 things you envisioned Paul was going to assist you
13 with?

14 A Yes.

15 Q Okay. Before Paul arrived at the property,
16 were you envisioning that he was going to help hold
17 some of the branches so you could cut them?

18 A No.

19 Q That was not even in the back of your mind?

20 A No.

21 Q Okay. Did you not want Paul to help hold the
22 branches or you just didn't know if he was going to or
23 not?

24 A I didn't know that he was going to do that.

1 Q Okay.

2 A No.

3 Q Did you want him to hold the branches or did
4 you not want him to hold the branches or did you not
5 care?

6 A It wasn't a matter of not caring. He chose
7 to and then we went with it.

8 Q Okay. So was that appropriate for you that
9 he hold the branches for you then?

10 A It seemed to be appropriate at the time.

11 Q Okay. I'm just trying to find out whether he
12 was holding these branches --

13 A I understand.

14 Q Hold on. Hold on. I'm trying to find out
15 whether he's holding these branches against your will
16 or not. Obviously there was some --

17 A No, he was not holding them against my will.
18 He was helping --

19 MR. CALLAHAN: Wait until he finishes the
20 question.

21 THE WITNESS: Okay. I thought he was finished.
22 BY MR. MAST:

23 Q So he was holding the branches ultimately and
24 eventually with your acceptance and permission; fair

1 enough?

2 A Acceptance, yes.

3 Q Well, if you didn't permit him to do it, you
4 would have told him not to, right?

5 A I don't control Paul's hands nor did I direct
6 him to do it at that time. He chose to pick them up
7 and we both started working together and that's the
8 method we chose. It wasn't like hey, this is right or
9 wrong; we just went to work.

10 Q I understand. This is what I'm saying, if
11 Paul did something you didn't want him to do, you
12 would tell him not to do that, I assume, right?

13 A I suppose, yeah.

14 Q Okay.

15 A Yes.

16 Q Did you ever have to tell Paul not to do
17 something before he got hurt and got cut by the chain
18 saw?

19 A No.

20 Q Okay. So up to the time that Paul got hurt,
21 he was doing the work in a way that was okay to you,
22 correct?

23 A Yeah.

24 Q Okay.

1 A Yes.

2 Q And he was doing the work in an appropriate
3 way to you, correct?

4 A Appropriate?

5 Q Yes.

6 A To me?

7 Q Right.

8 A Acceptable. I don't know about appropriate.
9 If you want to look up what is the definition of
10 appropriate.

11 Q Okay. You just don't know what the word
12 means. Okay. Because I can -- I can use a different
13 word.

14 A Oh, no, I know what the word means, it's the
15 way you're using it. You're telling me that I deemed
16 it appropriate that his actions what he was doing
17 without me telling him to do anything different were
18 okay or not okay, and what I'm saying is that it was
19 two friends -- Let me just have one moment.

20 Q Go ahead.

21 A And it was two friends working together who
22 have worked in similar situations, and I guess our
23 assumption in it was that we knew what we were doing,
24 the both of us. I didn't think that Paul would

1 jeopardize himself or me and likewise.

2 Q Okay.

3 A That's where we were at.

4 Q So my question is, was Paul doing everything
5 leading up to the time he was hurt in an acceptable
6 fashion to you?

7 A Yes.

8 Q Was he doing anything inappropriate before he
9 got hurt?

10 A No.

11 Q Okay. Had he been doing -- Had Paul been
12 doing something inappropriate prior or at the time he
13 got hurt, you would have told him not to do that,
14 correct?

15 A Again, inappropriate, I don't under- --

16 Q Okay. If he was doing something unsafe, you
17 would have told him not to do something unsafe,
18 correct?

19 A That wasn't even really considered. It
20 wasn't -- I'm honestly telling you that it wasn't a
21 thought in my mind at the time.

22 Q I'm not asking you if you considered it. If
23 you can say -- Hold on. Wait. You stopped. Let me
24 go. If you don't know, you can just say I don't know

1 but the question is if Paul was doing something
2 unsafe, would you have told him or directed him not to
3 do something unsafe?

4 A Yes.

5 Q Okay. That's all I'm asking. So your
6 testimony is that you never told Paul once what to do
7 prior to his injury on that property, correct?

8 MR. CALLAHAN: I just object as to form of the
9 question.

10 BY MR. MAST:

11 Q Is that correct or not?

12 MR. CALLAHAN: You may answer.

13 BY THE WITNESS:

14 A Ask the question again, please.

15 Q My under- -- Strike that.

16 Did you ever tell Paul what to do or how
17 to do it before he got hurt by being cut by the chain
18 saw on the date of his accident --

19 A No, I did not.

20 Q -- at your parents' house? Huh?

21 A No, I did not.

22 Q Never told him what to do?

23 A No.

24 Q Never told him how to do it?

1 A No.

2 Q Okay. So when he first arrived at, let's
3 say, 11:30, what was the first thing he did?

4 A He was watching me sort the branches and
5 said, What can I do to help? And I said --

6 Q Let's go step by step. Okay. So he was
7 watching you sort branches, right?

8 A Yes.

9 Q Okay. I want to go just step by step now
10 because we're going to get toward the accident and I
11 don't want to go too fast, okay?

12 A Okay.

13 Q So let's go step by step here. He got there.
14 You were sorting branches. You mean putting them in
15 piles?

16 A No. They were already in a pile and as I had
17 mentioned earlier, pine, when you cut it, it needs to
18 be addressed or orientated. If you put branches like
19 this, it's going to pull out unsafely. So if you
20 stack them with the cut ends like this, you can easily
21 pull them off one another.

22 Q Okay.

23 A That's why I was sorting, so that it would
24 go ...

1 Q I got it. Sorting branches. Paul gets there
2 and says, Can I help, right?

3 A How may I help.

4 Q How may I help. Okay.

5 And what do you say?

6 A I said, Well, I'm sorting branches. I guess
7 you can start by doing that.

8 Q Okay. So you had him start sorting branches
9 with you then?

10 A Yes.

11 Q Okay. And how long was he sorting branches
12 with you?

13 A Maybe another 15 minutes after I had spent
14 some time doing it myself.

15 Q All right. So -- Got you. So now we're at
16 about -- and I know these are just guesstimates, but I
17 just want to get a chronology. We're at about 11:45
18 now, okay?

19 A Mm-hmm.

20 Q Yes?

21 A Yes.

22 Q What happens next?

23 A The piles were sorted, time went by and chose
24 to start cutting the branches up. At first we had

1 placed them on these horses.

2 Q Well, wait. You're going into detail now. I
3 want to go step by step. The next step; that's all I
4 asked.

5 A Okay.

6 Q The next step was to start cutting the
7 branches up?

8 A Yes.

9 Q Okay. Who decided to start cutting the
10 branches up? Was that your decision?

11 A Yes.

12 Q Okay. So after the piles were sorted, you
13 said, Let's start cutting the branches, right?

14 A Yes.

15 Q Okay. And did he say, Can I help?

16 A He was there to help. I don't recollect if
17 he specifically said --

18 Q Okay.

19 A -- that.

20 Q So when you started cutting the branches,
21 what was Paul's task during the cutting of the
22 branches?

23 A To put them on the horses.

24 Q The sawhorses?

1 A Yeah.

2 Q How many sawhorses do you have?

3 A There was two there.

4 Q And how far apart were they spaced?

5 A Four feet.

6 Q And were you going to be putting them on the
7 sawhorses too or was that only what Paul was going to
8 do?

9 A That's what Paul was going to do, remove them
10 from the sorted piles onto the sawhorses.

11 Q And when he puts them on the sawhorses, you
12 were going to cut them up with a chain saw?

13 A Yes.

14 Q Okay. Who told Paul or who gave Paul that
15 job task? Was that you?

16 A Yes.

17 Q Okay. So the next step, piles are sorted
18 now, let's start cutting the branches. Paul, why
19 don't you put the branches on top of the sawhorses and
20 me, meaning you, I'll cut these branches on the
21 sawhorses up with the chain saw. That's the -- what's
22 going on, right?

23 A Yes.

24 Q Okay. How long did that occur?

1 A Ten minutes.

2 Q All right. So we're getting close now to
3 noon. What happens next?

4 A Paul opted to stand them up.

5 Q Wait. Wait. Say that again. I missed that.

6 A Paul opted to stand them up instead of
7 working on the sawhorses, and I just continued
8 cutting. It seemed like it was okay to do.

9 Q Okay. Fair enough. So instead of putting
10 the branches across the two sawhorses, you're saying
11 Paul on his own opted to stand them up aside of the
12 sawhorses?

13 A Yes.

14 Q So it would be leaning up against just one
15 sawhorse?

16 A No, freestanding large end.

17 Q Oh, you mean and hold them with his hand?

18 A Hold them with his hand. He was holding them
19 with his left hand to make a point of that.

20 Q Got you. Got you. Okay. So instead of
21 using the sawhorses, you're saying Paul decided to
22 hold them by himself with his left arm up while you
23 cut them from ground up; is that right? I need an
24 answer.

1 A Top down.

2 Q Okay. So let me say it again then. Instead
3 of using these sawhorses, you're saying Paul took it
4 on his own to hold the branches with his left arm up
5 and the branches down to the ground and you would cut
6 from the top down to the ground each branch, right?

7 A Yes.

8 Q And that was Paul's chosen way that he was
9 going to hold the branches?

10 A Yes.

11 Q Did you in any way voice any objection to him
12 doing it that way?

13 A No.

14 Q Okay. And for how long a period of time were
15 you cutting these branches in that manner where Paul
16 was holding them up with his left arm to the ground
17 and you were cutting them from the top down?

18 A 20 minutes.

19 Q Okay. So now we're at about 12:20, if my
20 math is correct. Is that about right?

21 MR. BARCH: Hans?

22 MR. MAST: Yes.

23 MR. BARCH: Can I just ask, are these little
24 horizontal cuts or are we talking --

1 MR. MAST: Well, I was going to get to that. I
2 want to first get the time line down. Yeah, we'll get
3 to that, but I will ask it now then.

4 BY MR. MAST:

5 Q So Paul is holding the limb -- the branches
6 up with his left arm over his head, the branch is now
7 from his left arm and hand going down to the ground
8 and you were starting up below his hand and cutting
9 every 18 inches?

10 A No, I was cutting the branches off of the
11 limb.

12 Q Got it. So you were cutting vertically up
13 and down. While he was holding the tree vertically,
14 you were cutting the horizontal branches in a vertical
15 fashion --

16 A Yes.

17 Q -- from a top to a bottom?

18 A Yes.

19 Q And I imagine each branch has probably 30,
20 40, 50 little --

21 A I would --

22 Q -- branches off of it?

23 A I would say --

24 Q Hold on. Let me finish the question.

1 A Okay. Sorry.

2 Q Let me say it again now. Every branch or
3 limb or whatever that Paul's holding above his head
4 with his left arm, I'm assuming those branches, if
5 they're reaching to the ground, are going to have 30
6 to 40 little branches coming off of it horizontally,
7 correct?

8 A Not that many.

9 Q Okay. Maybe 20 then?

10 A Or less.

11 Q Okay. So those are the 20 little branches
12 coming off of that branch that Paul was holding
13 vertically that you were cutting?

14 A Yes.

15 Q And then the branch would be left bare branch
16 from his hand to the ground?

17 A Yes.

18 Q And then what would he do with that branch
19 then, set it on the sawhorses to be cut up?

20 A Set it off to the side. We never got to
21 actually cutting up the whole load of wood because of
22 what --

23 Q Happened?

24 A -- happened, yeah.

1 Q His injury?

2 A Yes.

3 Q Okay. So for 20 minutes you and Paul worked
4 where he would hold a limb up with his left hand over
5 his head and the branch would be vertically down to
6 the ground and you would be cutting from top to bottom
7 each of the little limbs, 20 or so, off of that branch
8 he was holding?

9 A Correct.

10 Q And how many separate branches did you do for
11 that 20 minutes? How many separate branches did Paul
12 have to hold?

13 A I'll estimate between 25 and 30.

14 Q Okay. And then what happened after that
15 20 minutes of doing that work? What was next?

16 A We arrived at a branch being held in the same
17 fashion that was a little flimsy and in making the
18 first cut, that went well as the uppermost one, second
19 one and of course a pine, you know, they're left and
20 right so I'm not just cutting on this side. I'm over
21 here, over here, taking it down, taking it down. One
22 didn't go through; and at the same time I went to go
23 make the second cut, he put his right hand down to
24 support it so it wouldn't bow and it did go through

1 and it just nicked his arm.

2 Q Okay.

3 A And that's -- that's what happened.

4 Q Fair enough. Now, that's the one that sounds
5 like where his accident happened, right?

6 A Yes.

7 Q Okay. Because -- I see. Okay. Because if
8 Paul arrived at 11:30, you're saying his accident
9 happened around 12:30 which would be about the time
10 where we reached going through the task by task,
11 right?

12 A Yes.

13 Q I got you. Okay. So were you still working
14 at the time of Paul's injury with being cut by the
15 chain saw in the manner of where he's holding the
16 limbs up -- the branches up with his left hand over
17 his head and you're cutting the horizontal branches
18 off of that branch? You're still doing that at the
19 time of his injury?

20 A That's what we were doing at the time of the
21 injury.

22 Q Because you said you only did that for
23 20 minutes and then you did something and I thought
24 you were going to say you were doing something

1 differently. You were still doing that at the time of
2 his injury, right?

3 A We stopped as soon as he was injured.

4 Q Okay. Let me ask it this way: Once Paul
5 opted to hold the branches up with his left hand
6 instead of using the sawhorses and you started cutting
7 the limbs now off of that branch --

8 A Yes.

9 Q -- and you said you did 25 to 30 of those
10 branches --

11 A Yes.

12 Q -- the last branch you did, is that the
13 branch that Paul was holding when he was hurt?

14 A Well, it was the last branch that we did
15 because he did get hurt.

16 Q That's what I just said.

17 A Yeah, we just stopped.

18 Q Let me say it again because I want --

19 A Yes, I agree.

20 Q Let me say it again.

21 A Okay.

22 Q You gave an estimate of like for 20 minutes
23 you were cutting these horizontal limbs off of a
24 branch that Paul was holding overhead, remember that?

1 A Yes.

2 Q You said you did that for about 20 minutes.

3 A Yes.

4 Q And you did 25 to 30 separate branches,
5 right? Right?

6 A Estimating, yes.

7 Q Okay. The last branch that you did in that
8 fashion, is that the branch that Paul was holding when
9 he was cut?

10 A Yes.

11 Q Oh, okay. Because this is why I was a little
12 confused. You said at around 12:00, and I know we're
13 just doing estimates on times, but you said around
14 12:00 you did -- for 20 minutes you cut those 25 to 30
15 branches; so I thought there was something else you
16 were doing then after that by the time Paul got hurt,
17 but that 20 minutes is inclusive of the time of his
18 injury then, right?

19 A Yes.

20 Q Okay. So really the time frame you gave me
21 from the time Paul arrived at 11:30 until his accident
22 was more 50 minutes; does that sound about right?

23 A It's really hard to recollect the time frame
24 when it wasn't relative at the time. There was --

1 Q I understand that.

2 A Let me finish, please. There was no time
3 frame of getting the job done nor was I aware of the
4 exact time that it happened because what was most
5 important at that time when it did happen was to get
6 him to the hospital.

7 Q I understand.

8 A And the only time that -- And the only time
9 that I checked the clock is when we checked into the
10 emergency room.

11 Q I understand all that.

12 A Okay.

13 Q That's not what my concern was. My concern
14 was you gave me an hour after Paul arrived is when his
15 accident occurred but the time line we gave was only
16 50 minutes by the time his accident occurred.

17 A Did you say 50 minutes?

18 Q 50.

19 A Okay.

20 Q So I just want to make sure we're not missing
21 some other element of work that he was doing.

22 A No. No, we're not.

23 Q Okay.

24 MR. BARCH: I'm going to object because he's been

1 giving estimates all along, but go ahead.

2 BY MR. MAST:

3 Q All right. So under the estimates of time
4 that we're giving, Paul arrives around 11:30, you
5 start the type of work that Paul is holding the trees
6 up by his left hand overhead as opposed to using the
7 sawhorses around noon. You do that for about
8 20 minutes in your estimate and that's when he's
9 injured, correct?

10 A Yes.

11 Q All right. So that last branch that Paul was
12 holding when he was injured, that's what I want to
13 talk about now. And that was a branch similar to the
14 25 or more before that, right --

15 A Yes.

16 Q -- that you were cutting, correct?

17 A Yes.

18 Q And you had cut these branches 25 to 30 times
19 without incident, without any problem, correct?

20 A Yes.

21 Q And that Paul was holding the branches the
22 same way in all those 25 to 30 times without incident,
23 correct?

24 A Yes.

1 Q Okay. And they were all being held over
2 Paul's head if Paul's 5, 8, then they were probably
3 what, maybe six and a half feet over his -- or six and
4 a half feet from the ground?

5 A They varied in amount of debris on each limb
6 and height. As you go up a tree --

7 Q Okay.

8 A -- the lengths diminish.

9 Q So sometimes Paul is holding the branch
10 directly out?

11 A Deviating between four and six --

12 Q You've got to let me finish my question, and
13 you can answer in any way you want but at least let me
14 finish.

15 So Paul might be holding some branches
16 out directly out from his chest, some over his head
17 just varying -- depending on height --

18 A Yes.

19 Q -- of the branch?

20 A Yes. Yes.

21 Q Okay. So anywhere from four feet off the
22 ground he might be holding a branch to six and a half
23 feet to maybe seven feet?

24 A No, not six and a half feet. I would say

1 somewhere between four and five feet.

2 Q Okay.

3 A Somewhere in and around just right here.

4 Q Fair enough.

5 A Yeah.

6 Q So Paul is holding with his left arm -- or
7 left hand out from his body extending out the branch
8 is from anywhere from four feet off the ground to five
9 feet off the ground, correct?

10 A The point where he was clasping that limb,
11 yes, would be four to five feet above the ground.

12 Q And then underneath where he's grasping is
13 where you're cutting?

14 A Correct.

15 Q The first cut that you're going to make is
16 the highest off the ground is how far under his hand?

17 A A foot and a half, foot. So it really
18 depe- --

19 Q All right. A foot and a half or a foot?

20 A May I finish?

21 Q Well, it's going to be best if you just
22 answer what I'm asking and not try to add on every
23 time.

24 A (Inaudible) sit here through that. I'm

1 sorry.

2 Q What's that?

3 A I'm sorry. It's just my character.

4 Q Well, that's fine. The question is this,
5 he's holding these branches extending his arm out and
6 holding them four to five feet off the ground
7 depending on the height of the branch, right?

8 A Yes.

9 Q Okay. And you are cutting the first cut
10 about 18 inches below his hand, correct?

11 A Yes.

12 Q That's the first cut, yes?

13 A Yes.

14 Q So that the branch that he's holding after
15 you cut it is going to be about 18 inches long, right?
16 The piece of wood that's in his hand after you make
17 your first cut is going to be 18 inches long?

18 A No. No, he was placing the whole limb -- if
19 I may, I know she can't record this. There's your
20 limb off your tree. There's a pile of them. Stump
21 down, that's where I cut it, the larger portion down
22 to the ground. He would hold the smaller portion
23 because on a pine tree they grow like this. If you
24 don't know that, they grow upwards like that. So I

1 was cutting in the crotches of them. He was holding
2 it, and I would stay away from him cutting off -- and
3 I would not, like, cut towards the top, which is
4 smaller, it's useless wood; we were just trying to get
5 rid of the debris. So he would hold it and I would
6 start cutting like this and put it over there. Off
7 the pile --

8 Q I got you.

9 A -- another one --

10 Q I got you.

11 A -- stump down and hold it like that.

12 Q I got you. So he is not cutting -- The base
13 of the branch that Paul's actually holding, you're not
14 cutting that?

15 A No.

16 Q You're cutting the stems or limbs that come
17 off of that horizontally?

18 A The sub limbs off the main limbs that were
19 already removed.

20 Q Is that correct?

21 A Yes.

22 Q Okay. And the -- Although there might be
23 limbs off of that branch all the way up to his hand,
24 you're starting 18 inches below his hand just to stay

1 away from his hand, right?

2 A Yes. Yes.

3 Q Okay. So when you're done cutting that
4 branch, there is still going to be some smaller limbs
5 coming off of that branch at the top by his hand and
6 that's okay, you can deal with it later?

7 A Correct.

8 Q Okay. So after you're done cutting
9 horizontally all those horiz- -- Strike that.

10 After you're done cutting vertically all
11 those horizontal limbs off of that branch, he puts the
12 branch back and picks up another branch and you do
13 that 25 to 30 times before Paul's injury?

14 A Yes.

15 Q Okay. The branch that Paul was holding when
16 he was injured.

17 A Yes.

18 Q Describe how high or off the ground he was
19 holding that.

20 A Five feet.

21 Q Okay. And was it a branch like all the other
22 branches?

23 MR. CALLAHAN: Just object to form of the
24 question.

1 BY THE WITNESS:

2 A By way of species?

3 Q No. Was it any different from any of the
4 other 25 to 30 branches he had held previously?

5 A It may have been a smaller one that is by way
6 of diameter that he chose to hold up.

7 Q This is what I'm asking. I'm not asking what
8 you might -- what might have happened. I'm asking
9 you, based upon you being there and I wasn't there,
10 was the branch that Paul was holding when he was
11 injured different in any way that you can tell that
12 you recall than any of the 25 to 30 branches he had
13 held previously without incident?

14 A None of the branches were exactly the same.

15 Q I understand that, but I --

16 A I don't know how to answer the question then.

17 Q Well, let --

18 A The --

19 Q Hold on. You answered it then. If you don't
20 know how to answer it; you've answered it. So let me
21 ask it a different way then. Other than every branch
22 being a little different in size and thickness and
23 amount of limbs off of it, is there anything unusual,
24 anything necessarily different from that branch than

1 the other 25 to 30 branches?

2 A No.

3 Q Okay. And in appearance, the branch looked
4 like any of the other 25 to 30 that you had cut just
5 previously, correct?

6 A Yes.

7 Q Okay. And probably a similar number of -- a
8 similar number of cuts off of this branch that Paul
9 was holding when he was injured, you were going to
10 have to make a similar number of cuts on that branch
11 as to the other 25 to 30 branches you were cutting?

12 A Generally, yes.

13 Q Okay.

14 A Okay.

15 Q How many cuts were you able to make off of
16 the branch that Paul was holding at the time of his
17 injury before he got injured?

18 A Four.

19 Q Okay. So if I'm going to draw a picture of
20 the branch, okay, and we're assuming that's a five
21 foot branch and it has limbs going all off it up and
22 down the branch, right? Right? Correct?

23 A (Nodding.)

24 Q Yes? I'm waiting for a word.

1 A I'm waiting to see what --

2 Q I'm not expecting you -- You don't have to
3 follow my picture. I'm just saying if I'm --

4 A Well, I don't follow your description so I'm
5 looking at the picture.

6 Q Okay. Well, I'm drawing a picture myself
7 to --

8 A Okay.

9 Q -- demonstrate to you --

10 A I'll wait till you're done.

11 Q No, I can demonstrate it to you. I don't
12 care. You can look at it.

13 This is a branch and then it has all
14 these limbs coming off it in varying sizes, widths,
15 and heights, okay? Fair enough?

16 A No, it's not the description of what was
17 being cut. That's why I --

18 Q All right. You describe what was being cut
19 then.

20 A The description of a pine branch or a limb is
21 that it starts at a certain diameter, whether it be
22 3 inches or 2 inches, and over its length, which is
23 also varying, it diminishes to just pine needles.
24 About increments of every and varying also between

1 6 and 12 inches are branches again that from the
2 larger diameter where it was cut from the tree begin
3 to get lesser and lesser as you go towards the end of
4 the branch.

5 Q Okay.

6 A There is a varying amount of how many
7 branches are on there because no tree is exactly the
8 same, so I was in conflict with what you were
9 thinking --

10 Q Okay. Fair enough.

11 A -- it looked like.

12 Q So Paul's holding the branch at the top?

13 A Correct.

14 Q Okay. With his left hand?

15 A Yes.

16 Q What's he doing with his right hand?

17 A No.

18 Q Just to the side -- to the side of him?

19 A Just aside -- aside and away, yeah.

20 Q Okay.

21 A Standing away from it actually as you had
22 physically shown it.

23 Q All right. What you're saying is he's
24 extending his left arm out in front of him keeping his

1 body away --

2 A Yes.

3 Q -- his left arm above and holding the branch
4 while his right arm is aside of him so the branch is
5 standing vertically maybe three feet from his body;
6 fair enough?

7 A Yes.

8 Q Okay. And then you start cutting these
9 horizontal limbs off the branch at about 18 inches
10 below his hand?

11 A Yes.

12 Q Okay. And do you remember how many cuts you
13 had to make at a distance of about 18 inches from his
14 hand before he was hurt? I'm not saying going further
15 down, I'm just saying at the 18-inch mark where you
16 were going to start the cuts.

17 A One.

18 Q Made one cut?

19 A One cut.

20 Q Okay. You got one cut?

21 A Very --

22 Q Hold on.

23 A I know that.

24 Q All right. Then you go down another distance

1 to make the second cut?

2 A To make another singular cut on a different
3 branch, yeah.

4 Q How far down do you go?

5 A It varies with how -- how far apart they are
6 on the branch. I would say between 6 -- 8 and
7 12 inches.

8 Q Listen, I don't want to guess so this is my
9 question, okay? Hold on. Hold on. We know he's
10 holding it at the top.

11 A Yeah.

12 Q We know it's about five feet, you said. We
13 know your first cut is 18 inches from his hand, right?
14 We know those things, right?

15 A Yes.

16 Q Okay. So my question is, based on what
17 you've just told me now, how far down from the first
18 cut that's 18 inches from his hand is the second cut
19 on -- give me your estimate.

20 A I will give you an estimate of between 8 and
21 12 inches.

22 Q Okay. So that's the next limb is 8 to
23 12 inches, right?

24 A Yes.

1 Q All right. And then how far down is the next
2 limb that you're cutting from that one you just cut,
3 the second one?

4 A Again, 8 to 12 inches.

5 Q All right. And you're now on your fourth
6 one. How far is the fourth one from the third one?

7 A There are branches on either side of that
8 limb, which means I would cut this one, this one.
9 This one, this one (indicating).

10 Q Okay.

11 A It looks like this.

12 Q I got you.

13 A Okay.

14 Q So what you're saying is, and I'm putting on
15 my diagram on the same side -- hold on -- on the same
16 side, but what you're saying is when you cut the first
17 one, the second one is going to be on the other side?

18 A Yes.

19 Q Okay. That's fine. You can describe that.
20 So the first one is on one side; you cut that
21 18 inches from his hand. The second one's on the
22 other side; you cut that 8 to 12 inches below the
23 first one?

24 A Yes.

1 Q The third one's on the same side as the first
2 cut 8 to 12 inches below the second one, right?

3 A Yes.

4 Q And where's the fourth one? Same side as the
5 second one?

6 A On the right side.

7 Q Over here?

8 A Staggered one, two, three, four.

9 Q Right. So it's the same side as the second
10 cut then. If you have one, two, three, four --

11 A I wasn't methodically approaching each branch
12 going left and right per se like, oh, I've got to
13 start here or start there. It really mattered where
14 he grabbed it and what was -- what was below his hand
15 for me to start cutting and again --

16 Q Listen.

17 A And, again, the branches aren't aligned as
18 you are drawing them. It's relative to me because --

19 Q Listen. The easiest process is for you to
20 either say you know something or you don't know
21 something, but you keep first leading --

22 A Sorry.

23 Q Hold on. Hold on. Hold on. You first lead
24 me down here and then you just say well, I don't know

1 then. Tell me what you don't know and I'll move on,
2 okay, but I'm going with what you're telling me. If
3 you don't know something, you just say I don't know.

4 Let's start over. He's holding his left
5 hand at the top of the branch. His first cut is about
6 18 inches below his hand, right?

7 A Yes.

8 Q On one side of that limb or branch?

9 A Yes.

10 Q Okay. So that limb is 18 inches down. You
11 cut that limb off, that horizontal limb, and then you
12 go down probably on the other side 8 to 12 inches and
13 you cut the limb on the other side?

14 A No.

15 Q Okay. What? You tell me.

16 A On a pine tree they're grouped, that's what I
17 was trying to show you, like this. They're not
18 staggered all over the place. When they grow, it's a
19 fan and they grow out like this. So it being stood
20 up, I'd go one, two, three, four.

21 Q That's what I just did here but we can do it
22 again. Let's try it again.

23 A Okay, but --

24 Q Hold on. This is what I'm trying to

1 understand and I'm trying to make it easy, but we can
2 go through this. He's holding the branch up with his
3 left hand and I'm trying to find out what distances
4 you cut each of those four limbs until he's hurt,
5 okay? I'm trying to find that out.

6 MR. CALLAHAN: Excuse me. It's just that there's
7 a disconnect here.

8 MR. MAST: Well, that's why I have to ask these
9 questions. We'll get there.

10 MR. CALLAHAN: I understand. I'm thinking he's
11 thinking that on your branch this branch comes out
12 like -- it'd be on a 45-degree angle up --

13 THE WITNESS: Yes.

14 MR. CALLAHAN: -- if I may. Then there's
15 branches like this and this with the pine needles on
16 them so he's cutting this one here, this one here, and
17 this one here.

18 BY MR. MAST:

19 Q Are you making three cuts on one branch?

20 MR. CALLAHAN: Four cuts.

21 MR. MAST: No, I don't think that's what he's
22 saying.

23 MR. CALLAHAN: I think that's --
24

1 BY THE WITNESS:

2 A I'm making one cut.

3 Q Here, let me do it. I think this is what --

4 A May I?

5 Q Hold on. Yeah, I'd be happy to. Let's
6 probably do it that way. Make it easy.

7 A Thank you.

8 Q We'll save about a half an hour of questions.

9 A Right.

10 Q I was trying to get it described that way but
11 it might be easier just to do it this way.

12 A Oh, I'm going to make it pretty. We've got
13 time. I have time.

14 Q You want some crayons?

15 A I'm going to make a Christmas tree for you.
16 That is a pine branch.

17 Q Okay. Now, let me ask the questions here.
18 All right.

19 A I'm cutting it right here in the crotch.

20 Q I've got it. See, your answers aren't going
21 to help unless they're after my questions.

22 A We'll get it all figured out.

23 Q All right. We're going to mark as Gagnon
24 Exhibit 1 that pretty tree you just drew, okay?

1 A Thank you.

2 MR. BARCH: You'll have to call it a -- It's a
3 single branch, not a whole tree.

4 THE WITNESS: Single branch.

5 MR. MAST: Okay. It's a branch. All right. I'm
6 sorry. I'm not good at these things.

7 BY MR. MAST:

8 Q All right. That's a -- Obviously it's not to
9 scale or anything, but it's just a drawing of a pine
10 branch, right?

11 A Correct.

12 Q And it's supposed to represent, even though
13 it's not exact, a typical type of pine branch that you
14 and Paul were cutting on the day of his accident?

15 A Correct.

16 Q Okay. Different sizes, different amount of
17 limbs coming off them but that's a representative of
18 those types of branches, right?

19 A Yes, it is.

20 Q Okay. So if we look at this, the base is
21 obviously going to be wider than the top of it, right?

22 A Yes.

23 Q So I'm going to put a T on your drawing where
24 the top of that is and a B where the base is. Did I

1 just do that?

2 A Yes.

3 Q So we know what words to use?

4 A Yeah.

5 Q Okay. So I'm going to put T O P and B A S E.

6 So we can refer so that we're using the same language.

7 Paul is going to be holding with his left hand the top
8 of the branch, right?

9 A Correct.

10 Q And then the base is going to be against the
11 ground in a vertical fashion from where he's holding
12 at the top, right?

13 A Yes.

14 Q And then starting 18 inches below his hand,
15 you were going to start cutting on either side of that
16 branch the horizontal limbs that are coming off that
17 branch, right?

18 A Yes.

19 Q Okay. So if this were a branch that Paul was
20 holding, his hand would be at the top and then you
21 would make one cut -- oh, you'd start -- okay, you'd
22 skip the top of it --

23 A Because it's --

24 Q Hold on. You'd skip the top limbs because

1 that's too close to his hand so you'd come down to
2 maybe the next set 18 inches below and start making a
3 cut there?

4 A Yes.

5 Q Then you'd go on the other side and make
6 another cut?

7 A Yes.

8 Q That's two. Then you'd make another cut on
9 there --

10 A Yes.

11 Q -- that's three. Then make another cut;
12 that's four. Then cut there, five. Cut there, six.
13 And you have the whole branch cut, right?

14 A Yes.

15 Q Okay. So let's number these one, two, three,
16 four, five, six. Does that number what we just
17 discussed?

18 A Yes.

19 Q So you're basically at least on this
20 demonstrative drawing, you're making six separate cuts
21 off of this branch and then you put the branch down on
22 the ground and get a new one?

23 A Yes.

24 Q Okay. All right. That did clear up about a

1 half an hour, so thank you.

2 A You're welcome.

3 Q Okay. And I'm sure they weren't all six cuts
4 every branch, right?

5 A No, they varied.

6 Q Is six pretty much an average or no?

7 A No.

8 Q As far as --

9 A There's no average.

10 Q Okay. There's maybe six, eight, ten,
11 something like that?

12 A There's no average. There's no way to
13 average it.

14 Q Okay. The branch that Paul was holding when
15 he was injured was a branch like most other branches
16 although in different sizes, correct?

17 A Yes.

18 Q Okay. And you're telling me you made four
19 cuts until he was injured?

20 A Fourth cut he got injured.

21 Q Okay. On the fourth cut?

22 A On the fourth cut.

23 Q Fair enough. So if we just start with that
24 one branch that Paul's holding and discuss what you

1 did up and to the time he was injured, you made the
2 first vertical cut from the horizontal limb 18 inches
3 below his hand, you made the second one on the other
4 side just like you did on Exhibit 1 here, then you
5 went down 8 to 12 inches lower, made the third cut on
6 one side, then you're going to the other side to cut
7 the fourth cut, right?

8 A Yes, correct.

9 Q What happens when you're going from the third
10 cut to the fourth cut that you believe is what caused
11 Paul to get injured?

12 A The fourth cut, not much unlike all the other
13 ones, the branch bowed. It may have been because it
14 wasn't rigid; it may have been weaker than the rest.
15 I don't know.

16 Q Can I stop you for a minute just so I know
17 what you mean by bowed. What do you mean, it was --
18 it was like limp?

19 A Yes.

20 Q Okay.

21 A Yes, not as rigid as the other one perhaps.

22 Q So when you say -- I don't want to jump too
23 far. When you say bowed then, that means when you
24 press the chain saw down, it kind of gives a little

1 bit more?

2 A Yes. Yes.

3 Q Okay. All right. So you're saying the
4 fourth limb that you're going to cut, that limb is a
5 little more weak, it gives a little bit more than the
6 other three that you already cut?

7 A The main branch taken from the tree is what
8 I'm talking about. I'm not talking about the branch
9 I'm cutting off. As I approached the crotch, the main
10 branch which I depicted on the drawing there gave way.

11 Q Okay. So if we -- Hold on. If we define
12 then just so we know we're talking the same language,
13 the branch is the solid continuous piece of wood that
14 Paul's holding whereas the limbs are the parts that
15 come off of that branch. Let's use those terms, okay?

16 A The limb is the larger piece; the branches
17 are what come off the limb.

18 Q All right. I'm sorry. All right. We'll do
19 it that way then. Let's define it that way.

20 MR. BARCH: Don't you watch that show on TV,
21 those Ax Men?

22 MR. MAST: No. No. No, I don't.

23 BY MR. MAST:

24 Q So let's put that on the -- I'm going to

1 write that on here so we use these same words.

2 Because I don't want to change the words so I put on
3 Exhibit 1 here branch for the little parts that come
4 off the main limb.

5 A Yes.

6 Q Fair enough?

7 A Yes.

8 Q That's what we're going to describe?

9 A Yes.

10 Q All right. So what you're talking about is
11 so we use the same terminology, the limb is what
12 Paul's holding with his hand that goes vertically from
13 his hand to the ground?

14 A Correct.

15 Q And the branches are the things you're
16 cutting off of that limb six to eight or so cuts,
17 right?

18 A Yes.

19 Q Okay. So what you're saying is after you cut
20 three of the branches off of the limb Paul's holding,
21 the fourth branch -- What happens with the fourth
22 branch?

23 A The limb had flexed slightly causing the
24 chain saw to come out of the crotch.

1 Q Okay.

2 A At that time, without moving away from that
3 instance, I approached the cut again. Simultaneously
4 Paul wanting to help me went to support it with his
5 right hand and at that same time I went through the
6 cut and I nicked his arm.

7 Q Okay. Okay. Now, when you're saying Paul
8 went to -- what did you say? -- support it?

9 A Yes, support it.

10 Q What was he -- Do you know what he was going
11 to do with his right hand?

12 A I'll tell you what he did with his right
13 hand. He actually grabbed the limb and supported it.

14 Q What part of the limb?

15 A Below the next cut that I was -- the last cut
16 that I made when it flexed and just below the one that
17 I'm talking about and followed through.

18 Q All right.

19 A The fourth cut.

20 Q So let's talk numbers.

21 A The fourth cut.

22 Q You just made the third cut.

23 A Yes.

24 Q And the fourth cut was still the same

1 distance from the top of the limb --

2 A Yes.

3 Q -- but it was on the other side --

4 A Yes.

5 Q -- of the third cut, right?

6 A Yes.

7 Q And had you cut the fourth branch by the time
8 Paul was injured?

9 A No.

10 Q Okay. So the fourth branch was still there?

11 A Yes.

12 Q But you were attempting to cut it, right?

13 A Yes.

14 Q And when Paul was holding with his left hand
15 the limb, it kind of flexed because it's held up
16 against the ground?

17 A Yes.

18 Q And it kind of bowed a little bit and you're
19 saying Paul then with his right arm did what?

20 A Went to support it below that cut as I went
21 to finish the cut.

22 Q Okay. So when you cut his arm, Paul's arm,
23 was his right arm on any part of that limb or branch?

24 A Yes.

1 Q What part?

2 A Below the fourth cut which did not go all the
3 way through.

4 Q Okay.

5 A He would have been like this (indicating).

6 Q All right. Hold on. So you just
7 demonstrated that his left arm was up, his right arm
8 was down on this limb, right?

9 A Correct.

10 Q So when you -- when he had his right arm on
11 the limb and his left arm on the limb together, his
12 right arm was below the fourth branch that you were
13 going to cut, right?

14 A Yes.

15 Q How far below?

16 A Maybe 8 inches. His hand was collapsed onto
17 the limb about 8 inches below that last cut that
18 didn't go through.

19 Q Fair enough. Okay. And when you made that
20 first attempt to cut that fourth branch, was his hand
21 there at that time or was that after you tried to make
22 that first attempt?

23 A It was after I made the first attempt at the
24 fourth cut.

1 Q Okay. You made the first attempt at the
2 fourth cut and because the limb bowed, you were not
3 able to penetrate the fourth branch, correct?

4 A Correct.

5 Q So did you just in a split second go back and
6 try it again or did you wait a couple seconds or what
7 happened? How long was the process?

8 A Like microseconds. It was -- You know, it's
9 a matter of just going -- and at the speed you can
10 see -- I'll describe if I need to or if you want me
11 to -- cut, cut and also the manner in which I'm
12 cutting, it's called the locked elbow position. You
13 don't just freewheel a saw. Nip, nip, nip, and it
14 went ... I was like okay. And at that same time he
15 just reached over to kind of help me out so it
16 wouldn't flex and that's how it all came together.

17 Q All right. Well, if he's reaching over and
18 that's why you cut him, then that leads me to believe
19 that he's not holding on to the limb at the time that
20 you cut him.

21 A Oh, he's holding on to the limb.

22 Q So is he reaching over at the time you cut
23 him or is he already holding on to the limb?

24 A Simultaneously as he reached down to that

1 limb standing like this flexed like that. At the same
2 time I went to finish the cut and I did finish the
3 cut. Like I said, it just --

4 Q All right.

5 A Just --

6 Q Hold on. You're going way too fast for us
7 and we're going to have to repeat the questions over
8 and over again and if we can just go step by step,
9 okay?

10 A Okay.

11 Q As he -- As you make the first attempt at
12 cutting that fourth branch, the tree flexes and your
13 saw blade bounces up or do you --

14 A Slightly bounces up, yes.

15 Q Okay. Then do you immediately put it back
16 down to cut it a second time to try to cut it a second
17 time or do you wait? Do you hesitate?

18 A I didn't hesitate.

19 Q So you immediately did it then, right?

20 A Say it again. No, just the last part.

21 Q I know. I get it. Your first attempt to cut
22 the fourth branch to the second attempt to cut the
23 fourth branch there was no hesitation, it was just
24 tried to go down and get it, it bent and then you went

1 back down to get it and you cut it off?

2 A Yeah.

3 Q And that's -- When you went back down to get
4 it that second time, that fourth branch, that's when
5 you cut his arm?

6 A That's when he placed his hand there and got
7 it cut.

8 Q Right.

9 A Yes.

10 Q Okay. So when he was cut -- physically when
11 the cut occurred, was his right hand on the limb or
12 not?

13 A Yes, it was on the limb.

14 Q Did you know it was on the limb?

15 A Yes, I did. It was clasping the limb.

16 Q Okay. How long was his right hand clasping
17 the limb below the forth branch that you were going to
18 cut before you cut his arm?

19 A It's hard to operate a stopwatch while you're
20 operating a chain saw. I really can't give you a time
21 frame as to something that happened so quickly and
22 when two men come together. Like I said, I can't -- I
23 can't answer that question. I don't know. I don't
24 know.

1 Q Listen, you gave me five minutes of why you
2 don't know. Just tell me you don't know, that's fine.
3 We can move on.

4 A I'm sorry. It's my character. I'm very
5 inclusive in my answer descriptive.

6 Q All right. Well, I'm just trying to tell you
7 you don't need to do that.

8 A And I'm working on it right now.

9 Q All right.

10 A I'm glad you --

11 Q So the question is, and I'm not saying is it
12 five minutes between the time you first tried to cut
13 it until the second time you cut it. I understand
14 we're talking seconds, okay. My question is --

15 A Milliseconds.

16 Q All right. Milliseconds. Fine. My question
17 is, when you went down to cut that fourth branch the
18 first time and the tree bent --

19 A Yes.

20 Q -- and you had to go down right away and cut
21 it a second time, when you went toward that fourth
22 branch to cut it a second time, when you went toward
23 it, was his right arm on the limb at that time or was
24 he off it and going toward it to hold on to it?

1 A At the exact same time that my saw went
2 through that fourth cut, his hand clasped that limb.

3 Q That's not my question. My question is this;
4 I'm going to say it again. My question is, you went
5 down to cut that fourth branch off and the limb bowed
6 so you went at it again; and my question is, when you
7 went at it again for that second cut on that fourth
8 branch, was his right hand clasping below that fourth
9 branch at that point?

10 A In time?

11 Q Yeah.

12 A Simultaneously.

13 Q Okay. So that simultaneously you're saying
14 when you're going after that fourth branch the second
15 time --

16 A Yeah.

17 Q -- he's now at the same time grasping on
18 below that fourth branch to hold on to the limb?

19 A Yes.

20 Q Okay. And do you see him as he is moving his
21 right arm toward the limb to hold on to it or do you
22 just see at the last second when your saw is going
23 towards the branch?

24 A I was focused on the branch and the cut. I

1 wasn't looking at him.

2 Q So your answer is you didn't see his hand
3 moving toward the --

4 A No, I did not see his hand.

5 Q You've got to let me finish the question.

6 A I'm sorry.

7 Q We're going to be here all day. Your answer
8 is you did not see his hand motioning toward the
9 limb -- his right hand motioning toward the limb to
10 hold on to it, you only saw it right when it clasped
11 the limb right when you were going at the branch a
12 second time?

13 A Yes.

14 Q So the time -- Simultaneously when you're
15 cutting that fourth branch, that's when you go through
16 that branch and then you end up going into his arm,
17 correct, his forearm?

18 MR. CALLAHAN: I'd just object to the form of the
19 question.

20 BY THE WITNESS:

21 A You're leading me into cutting him and that's
22 not what happened.

23 Q Oh, I'm sorry.

24 A I feel as though I am.

1 Q I get what you're saying. I'm sorry, maybe
2 that wasn't the way you wanted me to word it. I'll
3 try to word it differently.

4 A Thank you.

5 Q You're -- At least from what you're saying
6 is, you are motioning toward that fourth branch a
7 second time in attempts to cut it so you're moving the
8 chain saw, as you said, in that rigid locked position
9 with your elbow --

10 A Yes.

11 Q -- toward that fourth branch to cut it,
12 right?

13 A Yes.

14 Q So if you're going toward that fourth branch
15 to cut it, and I understand you're saying his right
16 arm is locking on to that limb at the same time,
17 right? Right?

18 A Yes.

19 Q But you're moving the chain saw forward to
20 cut that branch, right?

21 A Yes.

22 Q So when you're moving that chain saw forward
23 to cut that branch, that moving forward manner ends up
24 striking his forearm in the manner that it did to cut

1 him, right?

2 A I think we're overlooking the word
3 simultaneous. I'm sorry that I can't just answer your
4 question but it's -- the description is --

5 Q What do you mean?

6 A The description is not fitting the instance
7 that happened for me per se.

8 Q Put his arm movement aside for a minute.

9 A Okay.

10 Q Okay?

11 A All right.

12 Q We know simultaneously he's using his right
13 arm to grab on to that limb while you're making that
14 second cut to the fourth branch, right?

15 A Yes.

16 Q That's happening simultaneously; I understand
17 that.

18 A Yes. Okay.

19 Q My question is, while you were going down to
20 that second cut of that fourth branch, you're moving
21 the chain saw forward to cut that branch, right?

22 A Yes.

23 Q And in the process of moving the chain saw
24 forward to cut that fourth branch, that is the process

1 that takes your saw blade into his arm. Whether his
2 arm is moving or not, we can -- I can ask that next,
3 but the process of you moving forward with the chain
4 saw is part of what led to his arm being cut, right?

5 MR. BARCH: I'm going to object to the form of
6 the question. It's also argumentative. Go ahead.

7 BY MR. MAST:

8 Q Go ahead.

9 MR. CALLAHAN: I'll join that objection.

10 BY THE WITNESS:

11 A As you had said, it's part of how it
12 happened.

13 Q Right.

14 A It's an equal share.

15 Q Okay. Equal share meaning you're saying his
16 arm's moving near the limb as well as the chain saw
17 you are operating is pushing forward toward that limb
18 and the arm and the chain saw meet and he becomes
19 injured, correct?

20 A Correct.

21 Q Okay.

22 (A short break was had.)

23 BY MR. MAST:

24 Q All right. Finish up where we got this tree

1 now. So you're holding the chain saw, you're going
2 for that second attempt at the fourth branch to cut
3 it, and while you are cutting that fourth branch is
4 when the -- when Paul's arm is struck; is that right?

5 A Yes.

6 Q And so the chain saw is under your control at
7 the time, right?

8 A Yes.

9 Q You're not out of control, are you?

10 A I'm in control with the chain saw, yes.

11 Q Okay. And you're wanting to cut it when this
12 happens, right? You're wanting to cut with it when it
13 happens?

14 A Yes.

15 Q Okay. You are attempting to cut the branch
16 and that's when Paul's arm is attempting to hold on to
17 the limb, right?

18 A Correct.

19 Q And the chain saw is in motion when Paul's
20 arm is struck, correct?

21 A Yes.

22 Q Okay. And the first time you see Paul's arm
23 is when his right hand is grasping the base of the
24 limb below the fourth branch, correct?

1 A Yes.

2 Q You don't see it coming from the side toward
3 that bottom part of the --

4 A No.

5 Q -- of the -- of the limb, correct?

6 A No, I did not, correct.

7 Q Is that correct?

8 A (Nodding.)

9 Q Okay. Is that correct?

10 A That is correct.

11 Q Okay. Okay. When he gets cut, what is the
12 first thing that happens? Does he scream? Do you say
13 something? What's the first thing that happens the
14 split second he's cut?

15 A I say no. He says yes.

16 Q And what do you mean by no? You mean no,
17 that's not happening or what?

18 A Yeah, like no. No, it didn't happen.

19 Q Okay. And he says what?

20 A Yes. Let's go.

21 Q Yes what?

22 A Let's go.

23 Q Let's go what?

24 A Let's get out of here. It's time to go.

1 We've got to go to the hospital, you know. Yes, let's
2 go.

3 Q That's the first thing that happens once he's
4 cut, right?

5 A Yes.

6 Q And when he gets cut, are you able to see the
7 chain saw making contact with his arm, or how do you
8 first discover he's cut?

9 A It just looked like I could have nipped him.
10 It was so close that it looked like I could have
11 touched him.

12 Q Okay.

13 A That's what I did, I touched him.

14 Q All right. Had Paul ever held a limb before
15 he got cut with both hands before this?

16 A No.

17 Q Okay. So you did not expect him to do that?

18 A No, I did not.

19 Q Okay. And after you say no and he says yes,
20 do you guys -- do you basically put the chain saw down
21 and get in his car and go to the hospital?

22 A I threw the chain saw down and got in his car
23 to go to the hospital.

24 Q Was he bleeding?

1 A Yes.

2 Q Do you know -- and, again, I don't know are
3 fine answers. I'm not trying to imply you know things
4 but I just have to ask. Do you know how far or how
5 deep the chain saw went into his arm?

6 A I could tell you pretty accurately. I was
7 there in the operating room. It never went past the
8 epidermis.

9 Q What do you mean, the skin?

10 A Yeah.

11 Q Did it open the skin?

12 A Yes.

13 Q And it was bleeding?

14 A Yes.

15 Q Okay. Well, I mean, the doctors will be able
16 to tell us how deep it went. Are you telling me you
17 have some kind of medical ability to tell how far it
18 got cut?

19 A I'm educated to a certain extent and I was
20 educated there in the emergency room and I heard
21 everything that was being said and I was shown and
22 even Paul said look, and I was right there the whole
23 time looking.

24 Q You don't have any medical education or

1 ex- --

2 A No, I don't.

3 Q Wait. Back and forth here, please, please.
4 You don't have any medical education or training, do
5 you?

6 A No.

7 Q Okay. So any type of depth of incision or
8 cut that you would be talking about would be just
9 based upon what you saw visually, correct?

10 A It was visual, yes.

11 Q You never went with your finger inside the
12 wound?

13 A No.

14 Q Or any type of object?

15 A No measuring devices were employed, no.

16 Q Okay. Did you hear the doctors talk about
17 how far it was cut in?

18 A Yes.

19 Q How far did they say?

20 A Not deep, that was their assessment.

21 Q Okay.

22 A He was lucky.

23 Q Okay.

24 A It only hit the fascia; that's what they

1 said.

2 Q All right. Do you know -- You've known Paul
3 a long time before the accident?

4 A 35 years.

5 Q Okay. Have you ever known him to be injured
6 in any way before this accident?

7 A Yes.

8 Q Okay. What is that?

9 A A car accident.

10 Q When was that?

11 A I cannot put a pin date on it, but I can say
12 it was over seven years ago.

13 Q Okay. So maybe around 2006, somewhere around
14 there?

15 A I am guessing at that, but I know that there
16 was an instant which he was involved in an accident
17 and he also pursued.

18 Q Okay. Here, listen. Just follow me. If you
19 follow me, we'll go where we need to go and get there
20 fast, okay?

21 A As I said, it's a struggle because of my
22 character.

23 Q All right.

24 A I'm descriptive and inclusive.

1 Q Fair enough.

2 A You don't have to keep correcting me -- or
3 you do have to correct me; that's your job, but --

4 Q Fair enough.

5 A -- I'll try to get there for you, okay?

6 Q All right. Motor vehicle accident about
7 2006. Were you in the accident with him?

8 A No.

9 Q Do you know what injuries he suffered in that
10 auto accident?

11 A Nerve damage to the left elbow that was
12 allegedly struck.

13 Q In this case you mean?

14 A In that other -- Yeah.

15 Q Did he ever have any surgery for that left
16 elbow?

17 A I know he was poked and prodded. I don't
18 know if he was -- had actual open surgery for it
19 though.

20 Q Did he ever resolve that injury up until the
21 accident in this case?

22 A I don't know.

23 Q Okay. Other than a left elbow nerve injury
24 in a motor vehicle accident around 2006, any other

1 injuries from that motor vehicle accident?

2 A I don't know.

3 Q Okay. How do you know about that left elbow
4 nerve injury then?

5 A Because he showed people and talked about it
6 openly.

7 Q Was it a different location than where he was
8 lacerated or cut in the chain saw in this case?

9 A Yes, it was an entirely different arm.

10 Q Oh, I'm sorry. You're right. I'm sorry. I
11 wasn't thinking that far ahead. Good. In this
12 case -- In this case the chain saw was the right arm.
13 In that case it was the left elbow, right?

14 A Yes.

15 Q Okay. Any other injuries other than the
16 motor vehicle accident?

17 A I'm not aware of.

18 Q Okay. Any other prior -- prior to this case,
19 any prior injuries to Paul?

20 A Not that I'm aware of.

21 Q Any prior conditions of ill health with Paul
22 before his chain saw accident?

23 A I'm not aware of any.

24 Q In the four or five year let's say -- Strike

1 that.

2 In the five years before this chain saw
3 accident in June of 2011, was Paul in any way disabled
4 or limited in what he could do physically?

5 A I don't know.

6 Q Okay. Well, to what extent you do know -- to
7 what extent your contact you've had with him, you're
8 not aware of any; fair enough?

9 A Correct.

10 Q Okay. Are you aware that Paul was under any
11 medical consultation or treatment in the five years
12 prior to Paul's chain saw accident in this case?

13 A I am not aware.

14 Q Okay. After this accident are you aware of
15 Paul receiving medical treatment from time to time for
16 his right arm laceration?

17 A Yes.

18 Q How many times -- Let's say in the month
19 after this chain saw accident, how many times did you
20 see Paul? I mean, was it every day?

21 A No. No. Maybe three or four times since
22 this accident I've seen him.

23 Q Total?

24 A Yeah.

1 Q Up until now?

2 A Yeah.

3 Q Oh, I see. So it's been very infrequent
4 then?

5 A Yes.

6 Q Okay.

7 A Just the instances where we exchanged what I
8 had given in the beginning of this deposition.

9 Q Right.

10 A Those are the only times I spoke to him.

11 Q All right. So let me summarize that just to
12 make sure we're clear. What you're saying is, I'm
13 assuming before the accident you saw Paul a lot,
14 right, or not?

15 A I wouldn't even say frequency. From time to
16 time.

17 Q Maybe once every couple of weeks or
18 something?

19 A Yeah, that's honest. That's fair.

20 Q All right. So let me word that all out then.
21 Before the accident you were seeing Paul every couple
22 of weeks maybe infrequently; fair enough?

23 A Infrequently, okay, yes.

24 Q Fair enough?

1 A Yes.

2 Q After the accident you saw Paul only on those
3 occasions where you had words with him that you
4 described at the beginning of the deposition?

5 A Correct.

6 Q And that would have been, looks like, four
7 times?

8 A Yeah.

9 Q Right?

10 A Yeah.

11 Q Okay.

12 A With the exception of the one time when he
13 did come up to help me work, but we didn't discuss
14 anything that had to do with the case; he just came up
15 to work.

16 Q When was that? Was that a different time?

17 A It was after the accident. He helped me do a
18 roof on my house.

19 Q So it's different than the four times we
20 talked about at the beginning of the deposition?

21 A Yeah, we were talking about conversation and
22 this wasn't really conversation. It was -- we were
23 just working.

24 Q Okay. So that's why I'm trying to get this

1 summarized.

2 A Okay.

3 Q After the accident we talked about four
4 different times you had a conversation with Paul about
5 various things. We talked about those, we tried to
6 give approximate dates and things.

7 A Yes.

8 Q Okay. Other than those four conversations
9 with Paul, you said there was one other time you
10 had -- you were with Paul after his accident and that
11 was to do a roof?

12 A My roof at my home, yeah.

13 Q Okay. When was that?

14 A It would be October.

15 Q Of what year?

16 A 2011.

17 Q Same year as the accident?

18 A Yes. Yeah.

19 Q All right. So you did -- Was he helping you
20 do roofing work on your house?

21 A He was helping me tear it off.

22 Q Okay. Did he have any kind of bandage or
23 brace on his right arm from the injury in this case?

24 A No.

1 Q How many days was he helping you?

2 A Just one.

3 Q For how many hours?

4 A Five, six hours.

5 Q Okay. So you're saying after the accident in
6 October of 2011, we're talking maybe about four months
7 after the accident, Paul helped you on one day five to
8 six hours to pull your old roof up off your house?

9 A Yes.

10 Q Okay. Was anybody else helping you --

11 A Yes.

12 Q -- during that time?

13 Who?

14 A Mike Shoshie, neighborhood friend.

15 Q How do you spell that?

16 A S H O S H I E.

17 Q Is he still a neighborhood friend?

18 A Yes, he is.

19 Q Where does he live?

20 A Two blocks away from me. I can't give you
21 his address; I don't retain it in my memory, but I
22 know where he lives. I could submit that to you at a
23 later time if you'd like.

24 Q Very good.

1 MR. BARCH: I need to at least go on record that
2 we started around 1:00. There's been some breaks,
3 it's now 3:45. If Mr. Gagnon's attorney is going to
4 stick to the three-hour limit, I need some time.

5 MR. MAST: I'll try to wrap it up.

6 MR. BARCH: I know, but I don't want to get to
7 the three-hour point and have the plug pulled.
8 There's only 15 to 20 minutes left.

9 MR. MAST: Well, I guess that's -- that's -- I
10 mean, we didn't -- Hold on.

11 MR. BARCH: Well, I think you and I have a duty
12 to share our time.

13 MR. MAST: Before the dep we didn't really
14 discuss this so it's fair that you bring that up. I
15 don't know if you have a lot, but I'm trying to wrap
16 it up now with me. I don't think I'm going to take
17 the full -- I don't think I'm going to be a half an
18 hour from now. I don't know how much time you have so
19 is it -- do you have a lot of time or are you just
20 looking at 10, 15 minutes?

21 MR. BARCH: Yeah.

22 MR. MAST: Yeah, so we should be fine.

23 MR. CALLAHAN: Yeah, during the break Mr. Mast
24 and I discussed this. We're told the deposition

1 started at 1:12. He said he'd wrap it up so you
2 should have time.

3 MR. MAST: Yeah.

4 MR. BARCH: Okay. Good. I just want to make
5 sure we're all on the same page, that's all.

6 MR. CALLAHAN: If you go a little over, I'm not
7 going to jump up and scream.

8 BY MR. MAST:

9 Q Anyone other than Mike Shoshie, you and Paul
10 that was assisting on your roof at the time Paul was
11 helping you?

12 A No one else was assisting but there were
13 witnesses that seen him helping in those duties.

14 Q That was my next question by the way. Who
15 was that?

16 A Joe Vlk.

17 Q How do you spell the last name?

18 A V L K. No vowels.

19 Q Where does he live?

20 A In the neighborhood by me also.

21 Q Anybody else?

22 A My wife.

23 Q Okay. And are you aware of him having any
24 difficulties in helping you during those five or

1 six hours because of his injury in this case?

2 A He seemed to not exert himself fully and was,
3 if not nursing, staying away from using that arm in
4 full but nonetheless was still grappling and moving.

5 Q Fair enough. So you're allowing the fact
6 that he was reserving some of his -- saving himself a
7 little bit for the right side where he hurt his arm in
8 this chain saw accident as if there was something
9 still lingering there?

10 A Yes.

11 Q Okay. But he still was able to help you for
12 five or six hours irrespective of what might be his
13 ongoing issue?

14 A Yes.

15 Q Okay. So other than those five to six hours
16 that given day in October 2011, you had four other
17 meetings and conversations with Paul that we already
18 fully talked about and there's no more need to detail
19 those anymore; fair enough?

20 A Correct.

21 Q Okay. And the first conversation was coming
22 right out of the hospital that day of the accident,
23 right?

24 A Yes.

1 Q The next one was four months later, the other
2 one was 2012 and the last one wasn't about any
3 financial thing but it was a little bit before the
4 2012 meeting; fair enough?

5 A Yes.

6 Q Okay. Have you now told me everything that
7 you had -- Well, strike that.

8 Let me ask this question first. Did you
9 and Paul at any time discuss how or why the accident
10 occurred?

11 A No.

12 Q Okay. And that's on both sides. You never
13 told Paul, Hey, why were you holding on to the branch,
14 or, I didn't know you were doing that, or, Why were
15 you grabbing with your right arm? You never told that
16 to Paul, did you?

17 A No.

18 Q And Paul never said, Hey, why were you
19 cutting the way you did, or anything like that; he
20 wasn't complaining to you?

21 A No.

22 Q Okay. Have you talked to anybody else other
23 than your attorney and your insurance company about
24 what happened?

1 A No. My mother. Just back to my mother.

2 Q Oh, and you might have -- You know what?

3 This isn't a big deal, but I think in terms of just
4 being all-inclusive, you did -- I printed out what my
5 assistant wrote down from a recorded statement that
6 you knew I was taking over the phone of you, correct?

7 A Yes.

8 Q Did you read this at all?

9 A That one I -- Yeah.

10 Q Huh?

11 A Yeah.

12 Q This is the narrative from the recorded
13 statement that she took down and I'm assuming she took
14 it down right. I didn't go and read it and listen to
15 it.

16 A Yeah, I had a few blanks in there and such
17 that, you know ...

18 Q Well, hold on. The question is --

19 A Yeah.

20 Q And I'll mark this as Exhibit 2, okay, and
21 I'll just put a 2 for now. But would you agree
22 that -- and I know you didn't listen to the recording
23 so I understand that, but would you agree that reading
24 this narrative marked as Exhibit 2 accurately states

1 what you would have said on that phone call to me?

2 MR. CALLAHAN: I'd just object to the form of the
3 question and as to the number of variables with the
4 recording and with the transcription of the process
5 itself, including some of the language in the
6 transcript and ask him if he could -- I think it's
7 better if this would be pointed out page by page or --
8 excuse me -- line by line more or less if he's
9 agreeing with that.

10 MR. MAST: I can do that. Yeah. Joe, I'm just
11 trying to make it easy.

12 MR. CALLAHAN: Yeah.

13 BY MR. MAST:

14 Q Let me put it this way: Have you read this
15 narrative from your recorded statement?

16 A Yes.

17 Q Is there anything in the narrative -- and
18 I'll let you read it again if you need to, is there
19 anything in this narrative, Exhibit 2, that you
20 believe you did not say that's attributed to you?

21 MR. BARCH: Form of the question, but go ahead.

22 BY MR. MAST:

23 Q Here, I'll give it to you again. Just read
24 it through. I don't want to go through line by line

1 unless you want to but basically I'm asking you, did
2 you say those words and is this --

3 A This besides the blanks that are there --

4 Q Yeah, besides the blanks.

5 A -- yeah.

6 Q Okay. All right.

7 MR. CALLAHAN: And I'd just point out too that
8 there seems to be -- like if you read that thing in
9 total, there are eight parts where the subject and
10 verb don't agree, there's parts where it goes on, it
11 doesn't make sense and that also has to be considered
12 as well as to the totality of the accuracy and the
13 candor of the statement.

14 BY MR. MAST:

15 Q Okay. This is my question, and again I know
16 you didn't compare the audio to that statement; but
17 you read that statement and all I'm asking is, you
18 generally recall giving me a statement over the phone,
19 right?

20 A Yes, I do.

21 Q And does that generally, and again we can
22 listen to it to find out specifically what it says;
23 but does that generally meet with your recollection of
24 what you said?

1 A Yes.

2 Q Okay. And that's Exhibit 2, correct?

3 A Yes.

4 Q All right. Again, it is what it is. Let's
5 put Exhibit 2 on here so we can keep track of these
6 things. Okay.

7 Now --

8 MR. MAST: Oh, I didn't put this on the record.
9 I'd like to put this on the record. I don't have
10 answers today of interrogatories, nor I don't think
11 this response is to my production request. Let me
12 just see. No, this response to the production request
13 is to codefendants' response. So I don't have that
14 discovery, nor answers to interrogatories to my
15 discovery. I'm assuming nothing is going to be crazy
16 or different than what went over today but to the
17 extent it does, I'm going to reserve my right to the
18 extent I need to, but let's just mark this as
19 Exhibit 3.

20 BY MR. MAST:

21 Q And what Exhibit 3 is, is what I was given
22 today right before the deposition are, Mr. Gagnon,
23 your answers to codefendants' interrogatories and
24 response to production request. Nothing that you need

1 to concern yourself to other than I will ask you
2 Exhibit 3, is this your signed answers to
3 interrogatories that you're giving in this case?

4 A Yes, I received this in the mail and answered
5 those questions as they are printed.

6 Q And you signed it verifying these are your
7 true and correct answers, correct?

8 A Yes.

9 MR. BARCH: Do you have a signed version? I
10 don't have a signed one.

11 MR. MAST: Yeah, it's signed.

12 BY MR. MAST:

13 Q All right. Has -- I think defense counsel
14 already answered this, but I just want to make sure
15 that you haven't heard anything that your defense
16 counsel hasn't heard -- has your homeowners insurance
17 rejected or reserved their right for coverage in this
18 case at all, to your knowledge?

19 MR. CALLAHAN: I'd just object, it may call for
20 privileged conversation and I object as to it may call
21 for conversations with insurance company but -- and I
22 can answer as far as I know, there's been no rejection
23 of anything, and I'll make that stipulation --

24 MR. MAST: I'll accept your answer then; that's

1 fine. All right. Let me just look through your
2 answers to interrogatories, the ones that I've got.
3 Hold on one minute.

4 BY MR. MAST:

5 Q Have you talked to your mother -- Or strike
6 that.

7 Have you talked to your parents at all
8 about this incident with regard to whether they saw
9 anything?

10 A No.

11 Q Okay. Do you know if they saw anything
12 regarding the incident?

13 A I know they didn't see how it went down.

14 Q Did they -- Do you know if they saw the
15 process of what you and Paul were doing in cutting
16 these branches down?

17 A No.

18 Q Okay. Do you know if they knew about the
19 incident before you left the property that day?

20 A Yeah, they knew that something had
21 happened --

22 Q Okay.

23 A -- bad.

24 Q Okay. Since you only met or spoke with Paul

1 on a few various occasions after the incident, I'm
2 assuming you're not really up-to-date on the nature
3 and extent of his recovery and/or his medical injury;
4 fair enough?

5 A No, I'm not.

6 Q Is that fair enough?

7 A That's fair.

8 Q Okay. So what limitations or the severity of
9 the injury and what it's turned out to be, you don't
10 know about; fair enough?

11 A I don't know.

12 Q Okay. And the work you were doing was at the
13 request of your parents, correct?

14 A It was at the submitting of my parents for my
15 suggestion that it was a good time to do this.

16 Q It was for purposes of your parents. It was
17 their property and it was --

18 A Yes.

19 Q -- work doing --

20 A It was for purposes of my --

21 Q Hold on.

22 A Okay.

23 Q It was for their purpose, your parents'
24 purpose to do it. You weren't benefiting yourself in

1 doing it, were you, other than getting money for it?

2 MR. BARCH: I object to the form of that
3 question. It calls for legal opinions.

4 MR. MAST: I don't --

5 BY MR. MAST:

6 Q Go ahead. Do you want me to ask the question
7 again?

8 A Yeah.

9 Q All right. The work you were doing in
10 cutting the tree on your parents' property when this
11 injury occurred was to benefit your parents, correct?

12 A Yes.

13 MR. BARCH: Same objection.

14 BY MR. MAST:

15 Q Okay. And you were getting paid to do it,
16 correct?

17 A Yes.

18 Q Okay.

19 MR. MAST: Go ahead. I'll let you go and see if
20 I have anything else here.

21

22

23

24

EXAMINATION

1

2

BY MR. BARCH:

3

4

5

Q Hopefully don't have to cover everything over again, but I do want to back up a little bit. Mike McArdle?

6

A Mike Mcartor.

7

Q Mcartor?

8

A Yeah, Mcartor.

9

10

Q He was a friend of yours for a long time as well?

11

A Yes.

12

13

Q And what's the connection between him and Mr. Dulberg? I mean ...

14

15

A They both live together in Paul's mother's home.

16

Q They've been living together for years?

17

A Ten years.

18

Q Ten years?

19

20

And it's a sensitive question, but are they a couple?

21

A A lot of people wonder.

22

Q Okay. Well, do you know?

23

A I don't know.

24

Q You've known them both for years.

1 A I don't know. I mean, I don't know either
2 way so I just don't know. I'm not being facetious; I
3 just don't know.

4 Q Have you ever talked to Mr. Mcartor about
5 what happened?

6 A No.

7 Q No?

8 A No.

9 Q They -- There was one conversation --
10 (Short interruption.)

11 BY MR. BARCH:

12 Q There was one conversation I think you had
13 with Mr. Dulberg and Mr. Mcartor was present?

14 A Yes.

15 Q And let me see if I can remember which one
16 that was. Do you remember of the four that we talked
17 about earlier --

18 A Yes, it's the one in the kitchen where Mike
19 was present and Paul had commented that he thought
20 that this was a blessing and the best thing that could
21 have happened because he won't have to work another
22 day of his life. Won't have to retrain for a job,
23 blah-blah-blah, on and on.

24 Q Okay. Do you recall Mr. Mcartor making any

1 statements?

2 A No. No, Mike is a listener.

3 Q Okay.

4 A He stays out of things.

5 Q And I may be confused but was that the same
6 conversation where he -- where you basically said you
7 wouldn't tell something that wasn't true?

8 A No, that was a separate conversation. I was
9 leaving his house and he kind of just blurted out
10 across the kitchen where Mike was witness to him
11 saying it.

12 Q The one that Mike was there, there wasn't any
13 discussion about money or --

14 A No.

15 Q -- testifying any certain way?

16 A No.

17 Q Okay. All right. I guess going back to this
18 whole situation, what brought you out to your -- I
19 guess to this -- to do this work at your mom and dad's
20 place. That's your mom, right?

21 A Yes.

22 Q Carolyn is your mom, and Bill's been your
23 stepfather for years?

24 A For years, yeah.

1 Q And you were there -- If I understand what
2 you're saying, you were there, there was a discussion
3 as to what to do with these trees now that the shed
4 was down?

5 A Correct.

6 Q And it was just a -- if I heard your
7 testimony, a good opportunity to take down these
8 overhanging trees?

9 A Yes.

10 Q Was there plans to put up a new shed?

11 A No. Actually, we installed the same size
12 shed on the same platform in the same spot after the
13 trees came down.

14 Q Okay.

15 A As I said, it was opportune because it was
16 absent now.

17 Q Okay. But was there -- the long-range plan
18 was to put a new shed back in the same spot?

19 A Yes.

20 Q A replacement?

21 A Yes.

22 Q All right. So before doing that, it was --
23 your thought is let's get rid of this overhanging
24 tree?

1 A Yes.

2 Q All right. And I -- I -- This whole notion
3 as to whether you were paid or not paid, did they end
4 up giving you cash for doing work out there?

5 A I did a multitude of things; but yes, for
6 that job --

7 Q Okay.

8 A -- there was many upgrades done on the
9 property, so ...

10 Q Did you consider yourself to be their
11 employee or were you just doing a favor for them for
12 money, what?

13 A No, I was -- I was doing a favor and because
14 of the times, I was getting money where I could and my
15 mom wanted to supply me with some kind of means of
16 income because I couldn't find it anywhere else and I
17 provided a service for her.

18 Q You called it at one point a chore --

19 A A chore.

20 Q -- that you were doing for them?

21 A Yeah.

22 Q All right. Now, with respect to the tree
23 trimming and then ultimately whether they were
24 removed, did either Bill or Carolyn come out there and

1 tell you how they wanted this done?

2 A No.

3 Q Prior to you undertaking that job, did you
4 sit down with them and have them tell you what they
5 wanted done, what their expectations were, or anything
6 like that?

7 A No.

8 Q Have you ever actually seen either one of
9 them use a chain saw?

10 A No.

11 Q Would you agree that you were free to cut
12 those limbs, take down the branches, to do that in any
13 way you saw fit?

14 A Yes.

15 Q And you didn't have an invoice or a written
16 contract with them --

17 A No.

18 Q -- or anything like that?

19 A No.

20 Q And then this whole concept as to whether
21 David was there -- I'm sorry -- as to why Paul was
22 there, he was there -- you invited him over?

23 A I did.

24 Q And Mr. and Mrs. McGuire may have known he

1 was coming over?

2 A Yes.

3 Q You told them that?

4 A Yes.

5 Q Did you tell them that he was coming over to
6 help you?

7 A I said that I asked Paul to help me today and
8 they didn't say anything because we worked together
9 before and they're friends, so ...

10 Q And at that point, if I heard your testimony,
11 there was no discussion between you and your parents
12 about them paying for Paul's time?

13 A No.

14 Q And that wasn't something that you and Paul
15 even talked about?

16 A No.

17 Q Even up until the point of injury, that was
18 not a subject of conversation?

19 A No, it was not.

20 Q Do you know if he was planning on taking some
21 of the trimmed-up branches for firewood?

22 A I was assuming in my mind that that would
23 suffice him initially, yes, because he had already
24 taken some before from the front yard. He has a

1 fireplace at his home that he burns --

2 Q Okay.

3 A -- where we don't -- or she doesn't here.

4 Q That was an assumption but was it actually a
5 subject of conversation between you and he?

6 A No, we did not discuss it.

7 Q So in terms of what, if anything, Paul might
8 get out of it, as you sit here today, you don't recall
9 any discussions with Paul about what he would get in
10 return for helping you?

11 A No, he just agreed to help a friend take down
12 some trees.

13 Q And I -- if I'm understanding your testimony
14 too, Paul wasn't trying to override anything you were
15 doing; he wasn't telling you what to do either?

16 A No.

17 Q There was a lot of unspoken things happen
18 between the two of you?

19 A Yes.

20 Q The branch that you and Mr. Dulberg were
21 working on -- I'm sorry -- the limb that you and he
22 were working on, that one you mentioned as you were
23 cutting that fourth branch as turning, that one
24 flexed?

1 A Yes.

2 Q And you used the word flexed, at one point
3 also bowed, you used that word?

4 A Yes.

5 Q If I'm understanding what you're saying, the
6 actual limb itself bent?

7 A Yes.

8 Q All right. Did you have that happen on any
9 of the other 24 to 29 branches that you were cutting?

10 A No.

11 Q That was the first time that happened?

12 A Yes.

13 Q All right. And the -- at the point in time
14 you described, and I don't want to go through in
15 detail what you and Mr. Mast just went over, but you
16 described how you were moving for that -- at the
17 second attempt to get that fourth branch; and if I
18 understood your testimony, simultaneously Mr. Gagnon
19 is coming in with his right arm to grab the limb --

20 A Mr. Dulberg, yes.

21 Q -- and the saw and his arm converged
22 simultaneously?

23 A Yes..

24 Q Okay. Had Mr. Dulberg gotten his hand

1 anywhere near the chain saw any closer than 12 to
2 18 inches anytime prior to that?

3 A No.

4 Q At any point in time did you perceive or fear
5 that he was getting his arm too close or hand or
6 whatever, any part of his body too close to the blade
7 of the chain saw that you were operating?

8 A No. No.

9 Q Right up until the very end?

10 A No.

11 Q Did you ex- -- As you were cutting, having
12 down 24 to 29 branches, because this happened you're
13 estimating on the twenty-fifth or thirtieth branch,
14 correct?

15 A Yeah, somewhere around there.

16 Q Limb. Did you expect him to be putting his
17 arm in there to help with the flex?

18 A No, because none of them flexed previous to
19 that. I didn't foresee it at all.

20 Q All right. And would you agree that prior to
21 June 28, 2011, indeed right up until the point where
22 Mr. -- where the saw came in contact with
23 Mr. Dulberg's arm, you knew that a chain saw could cut
24 somebody?

1 A Yes.

2 Q You didn't have to be told that --

3 A No.

4 Q -- by anybody else?

5 A Did not have to be told that.

6 Q And would you also agree that you knew that
7 it would be important if you were using a chain saw to
8 keep it clear of somebody else's arm and hands and
9 body for that matter?

10 A Yes.

11 Q You didn't have to be told that by anybody?

12 A No.

13 Q And you talked about a certain position you
14 took with the chain saw, you called it a lock --

15 A Locked elbow.

16 Q Locked elbow?

17 A Yeah.

18 Q Is that where one hand's on there -- there's
19 like a bar that you can hold the chain saw with?

20 A Yes.

21 Q Then there's another part where there's a
22 trigger?

23 A Yes.

24 Q You actually have to pull the trigger to get

1 the chain to move?

2 A Yes.

3 Q And which elbow are you talking about being
4 locked, both of them?

5 A Right elbow locked into my ribs so that my
6 strokes were short.

7 Q Okay. So that was some -- that was a
8 technique that you were using to maintain control over
9 that chain saw?

10 A Yes.

11 Q Is that something that you learned just in
12 practice or something you heard before?

13 A No, I witnessed people doing it when they're
14 in close quarters because sometimes you'll have to do
15 that. You know, I have a friend who does tree
16 trimming and I'd just seen it performed before.

17 Q Okay.

18 A It's also less fatiguing on the worker.

19 Q And it may be elementary but correct me if
20 I'm wrong, you were -- as you were using the saw to
21 cut those branches off the limbs, part of what you
22 were doing is removing these limbs, correct?

23 A Yes.

24 Q The branches from the limbs?

1 A Yeah.

2 Q And part of what you're doing is trying to
3 not hurt yourself --

4 A Correct.

5 Q -- in the process?

6 A Yeah.

7 Q Were you also endeavoring to not hurt
8 Mr. Dulberg?

9 A Yes. I had no intentions of hurting anyone.

10 Q At any point in time prior -- right up until
11 the point where the chain blade came into contact with
12 Mr. Dulberg's arm, did you feel there was a -- did you
13 feel compelled or was there anything causing you to
14 feel compelled to tell him to keep his hands or arms
15 out of the way?

16 A No, they were not in the way.

17 Q He was doing that all the way up until that
18 point in time?

19 A Yes.

20 Q And if I heard you, you don't know all the
21 injuries -- the extent of any injuries or
22 complications Mr. Dulberg had as a result of that car
23 accident that he had?

24 A Nerve damage is all I was aware of.

1 Q Okay. Whether he broke his neck or had any
2 residuals with the elbow, rehab or surgeries, none of
3 that you don't know?

4 A Yeah, I don't know.

5 MR. BARCH: All right. That's all I have.

6 MR. CALLAHAN: I just have one -- two quick
7 questions that you may want to have some follow-up on
8 if I can just go?

9 MR. MAST: Okay.

10 EXAMINATION

11 BY MR. CALLAHAN:

12 Q Mr. Gagnon, are you aware of any other work
13 that Mr. Dulberg has done in addition to helping you
14 tear off a roof after the date of the incident?

15 A He tends a garden which is his whole front
16 yard this summer, the last summer. He did some -- He
17 did some renovation and tear-out work for a -- kind of
18 strange you asked that, but a homosexual that lives in
19 Twin Lakes and he just freely gave up, he's like,
20 Yeah, I met your friend Paul.

21 You know, he helped me tear out the dry
22 wall in my basement and stuff and then I was like, oh,
23 really? And I asked him if he would testify and he
24 said, I don't want to get involved. So maybe he'd

1 want to get involved now, I don't know, but that was
2 the one example; and then of course on my home, my
3 roofing.

4 Q So he did some demolition work for some other
5 people?

6 A Yeah.

7 Q And that was referred to in your statement
8 that you gave Mr. Mast before this deposition?

9 A Yes.

10 MR. CALLAHAN: Okay. That's all I have.

11 MR. MAST: Yeah, I want to follow up on that.

12 FURTHER EXAMINATION

13 BY MR. MAST:

14 Q He tends a garden. Do you ever watch him
15 tend the garden?

16 A I've seen him tend to his garden.

17 Q Since the accident?

18 A Physically walking in his garden and picking
19 vegetables, yeah. I mean, as far as tilling and that,
20 no, I have not seen him labor as far as tilling,
21 although he did borrow my tiller to till it.

22 Did I see -- Did I see him? No.

23 Q Okay. Have you ever seen him till his
24 garden?

1 A No.

2 Q The only thing you've seen him do since his
3 accident as far as his garden is to pick vegetables?

4 A Yeah.

5 Q Okay. And that's just by when you drive by
6 you see him doing that?

7 A He's -- He told me at those times when I was
8 there, you know, look at all the produce I have.

9 Q He told you when? What are we talking about?

10 A When I was there.

11 Q After the accident?

12 A Yeah. On those -- On those occasions that I
13 mentioned, he's got all his, you know, vegetables and
14 stuff lined up at his house.

15 Q You're going too fast. On what occasions?
16 These conversations we talked about at the beginning
17 of this deposition weren't all at his house.

18 A No, the one where I was in the kitchen.

19 Q Right. That's the one time. You said --

20 A Such as -- Such as that, you know, and --

21 Q Wait. Wait.

22 A His brother doesn't tend the garden.

23 Q Hold on. Hold on. Stop. After the accident
24 how many times have you been to his house?

1 A As I had said.

2 Q How many?

3 A As I had said.

4 Q What is as I had said? What answer -- How
5 many is that?

6 A You've got it written down right there.

7 Q How many? I don't know what you're talking
8 about. How many?

9 A I told you the one time in the kitchen.

10 Q Right.

11 A And there you go.

12 Q So one time?

13 A Yeah.

14 Q Okay. Just say one then; that's the answer.
15 So the question is, how many times have you been to
16 Paul's house since his accident? It's one time,
17 right?

18 A Yeah.

19 Q Is that a yes?

20 A Yes.

21 Q Okay. So the times that you've seen anything
22 that he's done with his garden, have you ever visited
23 him to see what he does in the garden?

24 A No, I didn't witness him working in the

1 garden.

2 Q Okay. So what you're saying is the testimony
3 you just gave about him tending the garden is what you
4 have had that one conversation when you were at his
5 house that one time after the accident, right?

6 A Yeah.

7 Q And that was a conversation you had with him
8 and he said, Hey, look at what I do when I tend my
9 garden?

10 A Yeah. I was figuring maybe the dog helped
11 him, you know.

12 Q You know, I'm not trying to be funny. I'm
13 just trying to get the facts, okay? Because what you
14 say might -- you might not understand but it leaves a
15 lot of inferences. I'm trying to finish -- find out
16 exactly what you mean as far as so I don't have to
17 infer what you mean, okay?

18 A Okay.

19 Q So I'm not trying to be funny about it. You
20 were there at his house one time after the accident,
21 right?

22 A Yes.

23 Q And that was the time four months after the
24 accident?

1 A Yes.

2 Q Okay. And that's the information then that
3 you got about him tending his garden, correct?

4 A Yes.

5 Q Okay. You've never seen him tend his garden
6 since the accident, have you?

7 A Picking fruit, tending? Yeah. I mean, are
8 you talking about tilling soil? Are you talking about
9 walking in the garden in the sense --

10 Q Have you seen --

11 A What are you saying is tending?

12 Q All right.

13 A I don't understand.

14 Q Okay. I understand that.

15 A Okay.

16 Q How many times have you seen him in his
17 garden since the accident?

18 A We'll say ten times driving by his house,
19 going into the neighborhood that I used to live in, no
20 conversations, not stopping by, not talking to him.

21 Q I got the answer, ten times.

22 A But I'd usually seen him in his garden.

23 Q During those ten times you've seen him in his
24 garden since the accident, what things have you seen

1 him do?

2 A Harvesting vegetables.

3 Q Picking vegetables?

4 A Yes.

5 Q Okay. With his hands?

6 A Yes.

7 Q Putting them in some type of basket or
8 something?

9 A Yes.

10 Q Okay. And you would see him just by passing
11 by so it'd be a matter of a couple seconds you would
12 see him, right?

13 A Yes.

14 Q For each of those ten times, right?

15 A Yes.

16 Q And those are ten separate dates?

17 A Yes.

18 Q Over a course of a summer?

19 A Over the course of since this occurrence.

20 Q Okay. So that would be two summers?

21 A So two summers, right.

22 Q Okay. Very good. Let's talk about that
23 renovation work then. The renovation work that you're
24 talking about isn't something you saw him do, it's

1 something that somebody else told you that he has
2 done, right?

3 A Yes.

4 Q And who is the individual, what's his name?

5 A Mike Thomas.

6 Q Mike Thomas?

7 A Yeah.

8 Q He's the homosexual you were talking about?

9 A Yes.

10 Q And he lives in where?

11 A He lives in Twin Lakes.

12 Q Okay. Are you friends with him?

13 A No.

14 Q Okay. So you don't know personally what Paul
15 did, if anything, at Mike Thomas's house, you just
16 know what Mike Thomas told you, correct?

17 A Correct.

18 Q Okay. So whether he actually did renovation
19 work, meaning Paul, you don't know; fair enough?

20 A His basement was renovated.

21 Q Whether Paul did the work or not, you don't
22 know; fair enough?

23 A I was told that he did the work.

24 Q Right, and so now I'm asking do you know if

1 Paul did the work or just through what you were told?

2 A I was informed that Paul had done the work
3 inadvertently without asking for me to be revealed
4 that someone -- someone had told me that I know this
5 person.

6 Q All right. Here, let me say it a different
7 way.

8 A I know, you're trying to work it your way.

9 Q I'm not trying to work -- I'm just trying to
10 get the basis of what you're saying and you didn't see
11 him do the work, right?

12 A No, I didn't see him do the work.

13 Q So you don't know if he really did the work,
14 do you, other than what somebody told you, correct?

15 A That's a fair assumption.

16 Q And Mike is the only person that told you he
17 did the renovation work, right?

18 A That is correct.

19 Q And what part of the renovation work you
20 don't know; fair enough?

21 A That's a fair assumption.

22 Q Okay.

23 MR. MAST: That's all I have. Thanks.
24

1 FURTHER EXAMINATION

2 BY MR. CALLAHAN:

3 Q I hate to do this but one more question.
4 Have you seen Mr. -- In the time you've seen
5 Mr. Dulberg after the accident, have you seen him
6 working on his computer?

7 A I've seen him working on his computer, yes.

8 Q All right. And he seems to be able to use
9 both hands on the computer?

10 A He's always on his computer, yeah.

11 Q Okay.

12 A That's what he does.

13 MR. CALLAHAN: That's all I have. Thank you.

14 MR. MAST: Now I've got to ask you that. All
15 right.

16 FURTHER EXAMINATION

17 BY MR. MAST:

18 Q How many times have you been to Paul's house
19 since the accident, just that one time?

20 A Yes.

21 Q Is that the only time you've seen him operate
22 his computer after the accident?

23 A That was the time that I've seen him, yeah.

24 Q Okay. Fair enough.

1 MR. MAST: All right.

2 MR. CALLAHAN: Signature reserved.

3 (Witness excused.)

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1 STATE OF ILLINOIS)
) SS.

2 COUNTY OF McHENRY)

3 IN THE CIRCUIT COURT FOR THE TWENTY-SECOND
 4 JUDICIAL CIRCUIT
 5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,

7 Plaintiff,

8 vs.

) No. 12 LA 178
)

9 DAVID GAGNON, Individually,)
 and as Agent of CAROLINE)
 10 McGUIRE and BILL McGUIRE;)
 and CAROLINE McGUIRE and)
 11 BILL McGUIRE, Individually,)

12 Defendants.)

13 I, DAVID A. GAGNON, state that I have read the
 14 foregoing transcript of the testimony given by me at
 my deposition on February 4, 2013, and that said
 15 transcript constitutes a true and correct record of
 the testimony given by me at the said deposition
 16 except as I have so indicated on the errata sheets
 provided herein.
 17

18 _____
 DAVID A. GAGNON

19 No corrections (Please initial) _____
 20 Number of errata sheets submitted _____ (pgs.)

21 SUBSCRIBED AND SWORN to
 22 before me this _____ day
 of _____, 2013.
 23

24 _____
 NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify that on February 4, 2013, the deposition of the witness, DAVID A. GAGNON, called by the Plaintiff, was taken before me, reported stenographically, and was thereafter reduced to typewriting under my direction.

The said deposition was taken at the offices of Thomas J. Popovich, 3421 West Elm Street, McHenry, Illinois; and there were present counsel as previously set forth.

The said witness, DAVID A. GAGNON, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate, and complete record of the questions asked of and answers made by the said witness, DAVID A. GAGNON, at the time and place hereinabove referred to.

The signature of the witness, DAVID A. GAGNON,
was reserved by agreement of counsel.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature on this 9th day of
December, 2013.

MARGARET MAGGIE ORTON, CSR, RPR

CSR No. 084-004046

MEMORANDUM

TO: File

FROM: Hans

DATE: February 6, 2013

SUBJECT: **DISCOVERY DEPOSITION OF DEFENDANT, DAVID GAGNON**

CASE: PAUL DULBERG

On February 4, 2013, I appeared for the discovery deposition of Defendant, David Gagnon taken before court reporter, Margaret Maggie Orton at Urbanski Reporting, 312/977-1777. The transcript was not ordered at the time, but we will call and have it ordered soon.

David Gagnon is kind of an unusual fellow. He is a very free spirit and talkative to the extent that he has difficulty remaining on point and many times his answers will flow into new issues and topics without much hesitation. He does come across somewhat likeable, however, but is an unusual sort and may come across at trial as somewhat defensive in his testimony. He testified to the following favorable and unfavorable points:

FAVORABLE TESTIMONY:

1. He agrees that as he was attempting to move forward with the chainsaw towards the limb to cut it, he struck Paul's right forearm causing him injury.
2. He admits that Paul was holding the branch with his left arm and reaching to hold the branch with his right arm when Paul's arm was struck by the chainsaw.
3. Paul had no pre-accident history of any problems with his right forearm.
4. He has not really been in contact with Paul much since the accident and doesn't know the nature and extent of his injury other than he does know that Paul has had some difficulty with his right arm since the accident.

UNFAVORABLE TESTIMONY:

1. He has spoke to Paul on several occasions after the accident during which Paul has indicated that "he might not have to work anymore" and "this lawsuit might be a great event in his life" and that he would share \$10,000 if he ends up settling for \$100,000 with David Gagnon - although Dave admits that Paul never conditioned Dave's testimony on any recovery or payment.
2. He believes Paul was reaching for the branch so that he could hold on to the lower end of the branch and keep it steady while Dave was cutting the limbs from the branch. However, Paul never grabbed onto the branch with his right before and this was something unknown to him

and he did not realize Paul was going to do this until just before Paul was cut with the chainsaw.

David Gagnon lives with his wife, Pamela at 39010 90th Place, Genoa, WI 53128. They have been married since 2008. Both he and Pam are longtime friends of Paul Dulberg. He has known Paul his whole life practically.

He explained that there were three particular conversations he had with Paul since Paul's accident in which Paul commented in a very questionable nature on the accident and how that might help him financially:

1. First, on the day of the accident after they left the hospital together and before they left the parking lot, Paul indicated to him that "we could make a lot of money at this."
2. For months after the accident, he was at Paul's house visiting along with Paul's roommate, Michael Mcartor when Paul mentioned that "this could be the best thing that happened to me because he will not have to work the rest of his life." This is the only visit he had at Paul's house since the accident.
3. Paul visited David at his home in 2012 after the suit was filed and Paul told him that "he would share \$10,000 of any money he gets if gets at least \$100,000 if it goes well for him." Dave responded that "what do you want me to say, that he was weelding the chainsaw and was negligent." Dave then said that he would not do that. Paul said "that would make it easier."

These three conversations are the only conversations he has had with Paul since the accident in any substantial sense and although he is not sure what Paul meant or implied with these statements, he felt that he was wanting Dave to say things favorable to his case to help him settle the case. Dave refused. However, Dave agreed that Paul never conditioned Dave's testimony on anything Dave said, although he did say it would "make it easier."

Dave graduated from high school in Johnsbury in 1985. Since then he started some college courses but never finished a college degree, but instead has been working most of his life since high school self-employed doing auto repair and body work. He does it at his home.

As for his use for chainsaws, he began using them probably around 1985, mostly on camping trips to cut up wood. In 2000 to 2004, he owned two different chainsaws but only one worked. He would use it from time to time to cut things in the yard. In 2004, he maybe used the chainsaw about 15 times until Paul's accident in June 2011. Most were on camping trips. Other than on camping trips, he would have used his friend, Mike's chainsaw on one occasion, another time was on a camping trip, another time would have been on his own property using a friend's chainsaw and the last time was just before the accident at his parent's house helping to cut up some wood. He recalls earlier in 2011, his parent's bought a brand new chainsaw and they were going to use it to cut down some wood in the backyard. He is not sure who they intended to use the chainsaw until he was asked two days before beginning work at his parent's house in June 2011, if he would help cut a couple pine trees down.

His parents are Carolyn and William McGuire. Carolyn is his natural mother, William is his step-father. His natural father died in 1996. His mother has been living at the same house since 1971. The address is 1016 W. Elder, McHenry, IL. It is on a one-third acre and it's a ranch house. There are only about 10 trees on the property. Before Paul's accident there were 13. Two of them were pine trees. He recalls a couple days before Paul's accident he spoke with his mother and father about removing a couple pine trees so that they can install a new shed. The older shed had come down because it was old. The parents agreed to pay him \$15 an hour for the work. Two days later he began the work on his own at his parent's property. He cut down several limbs from the two pine trees. The next day he went over to Paul's house in the morning to see if Paul wanted to help him for getting paid about \$15 an hour as well. They never talked about money but that was what he was implying, Paul would get paid as much as he is getting paid from his parents. He did not intend Paul to ever use the chainsaw on the day of the accident. He is not real sure what he expected Paul to do to help him other than to help stack the wood and clean up the tree debris. They never really discussed what Paul's work would do but Dave always planned on being the only one to use the chainsaw.

The two pine trees were in the backyard and they were about 50 feet tall a piece. They had a lot of branches on them. There were many limbs coming out from the base of the pine tree. It was over 25 years old. The process of cutting up the trees were as follows:

They would take a large limb maybe 4 to 5 feet tall and Paul would hold it in front of him vertically with his left hand out from his body and his right hand on his side. Dave would then begin 18" below Paul's left hand and start cutting on the sides of the branch all of the limbs off of the branch. The limbs were coming off horizontally from the vertical branch. He would cut off all of the horizontal limbs beginning 18" below Paul's hand. He did say that Paul is the one that chose to hold up the limbs or branches, it was not his decision. His decision was to use the two sawhorses and lay the branches over the sawhorses so that he could cut them down. (But that would be a lot more difficult because you would have to keep on picking up pieces as you cut the tree limbs from the sawhorses). Anyway, for about 25 to 30 different branches, Paul would hold them up with his left hand in front of him vertically and Dave would cut the limbs off of these branches. On the last one, Dave described that he cut about 4 limbs off the vertical branch Paul was holding and on the fourth one as he went down to cut the branch the branch bent a bit and gave way and he could not cut the limb cleanly, so he went down to cut the limb again at the same time as Paul was using his right arm and bringing it around to hold on to the branch to keep it steady. As Dave was going in with the chainsaw to cut this fourth limb from the branch the chainsaw struck Paul's right forearm. Immediately, they knew that he had to be taken to the hospital. Paul said let's go. Dave got in Paul's car and drove Paul to the hospital and they went in and got treated. Dave implied that it was not "a deep cut." But he has no medical expertise. Then when they got out of the hospital Paul said what Dave described earlier in this memo about "Paul saying that he could make a lot of money at this." He didn't really keep in touch with Paul much since the accident. Once suit was filed he became very angry at Paul because of some of the things that Paul was saying about "financially benefitting" from the claim.

As to his parents, he said that parents had no expertise in using a chainsaw and were not outside when the accident occurred. His parents were not directing on how he was to do the work, but he was to do the work on his own and in his own way. When I asked him questions about him directing Paul's work he said that he never directed Paul to do anything and that they had worked together on

other days and he just thought that they were working together and would work on their own to get the work done.

Subject: Re: Certified mail

Date: Thursday, March 12, 2015 at 10:36:25 AM Central Daylight Time

From: Hans Mast

To: Paul Dulberg

I have done nothing to lose your respect. I have gone far above what you would get from any other attorney you just don't realize it or appreciate it. Instead you continue to focus on issues that have nothing to do with your case. You don't listen to my advice. Which is fine. You don't have to listen to my advice. But 9 out of 10 times you will lose this case for trial. As I told you before that is why the defense is never going to offer the policy limits. To settle the case you will need to take far less than the limits. But you don't have to you definitely can go to trial. That is your personal choice. In my view your case is not worth the limits given the issues we've already discussed. So I have done what I can do for you.

We have I think \$3000 in costs that we will be paid no matter who is handling Case. We have worked on the case for years without pay....but if it will allow you to find another attorney we will consider waiving Our fee unless your eventual recovery exceeds \$100,000.

Sent from my iPhone

On Mar 12, 2015, at 10:19 AM, Paul Dulberg <pdulberg@comcast.net> wrote:

Hans,

I have found several attorneys and none are willing to represent me as long as you hold the lean on this case and apparently it is not legal for me to finance their representation by other means.

Respect for your thoughts does not constitute a breakdown in communications.

Respect is earned through truth, hard work and results.

I am asking for an honest brief to go before the judge. That is all.

Earn my respect and you will receive the best recommendation I have ever given anyone.

Paul

Paul Dulberg

847-497-4250

Sent from my iPad

On Mar 12, 2015, at 10:06 AM, Hans Mast <hansmast@att.net> wrote:

Paul I will be happy to deal with any attorney considering your case directly regarding my lien. But not until they call me to talk. As is clear with your email and many others you do not respect my thoughts and/or knowledge about these cases and there is no point in continuing any further in dealing with an unsatisfied client.

Find an attorney and I will talk to them about the lien.

Sent from my iPhone

On Mar 12, 2015, at 9:12 AM, Paul Dulberg <pdulberg@comcast.net> wrote:

Hi Hans,

Received your certified mail requesting to be released from my case due to a breakdown in communication between you and I.

I ask that you not follow through with this action unless you are willing to also sign off on your lean against my case. As I have no chance in hell of getting another attorney willing to take this case on without your lean being freed from this case.

Bottom line... No attorney I have spoken with is willing to trust that you will pay them from your lean.

Please withdraw your motion as there has been no breakdowns in communications between you and I.

The only breakdown was a very poorly written brief you asked me to look over in which the only truthful substance in it was the names and dates. Oh and the fact that you did manage to put the chainsaw in the correct persons hands.

I hope to be able to review your revised copy of this brief again soon.

Best wishes and Thank you,

Paul

I ask that if

Task List II

Paul Dulberg

847-497-4250

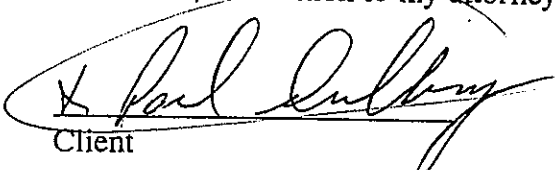
Sent from my iPad

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to ~~100~~ % in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.


Client

Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: 

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

Exhibit 1

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

Exhibit

2

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

COPY

MAY 15 2012

KATHARINE M. KIEPE
McHENRY CTY. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.

No.: 12LA178

DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, individually, and states as follows:

Count I**Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire**

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE MCGUIRE and BILL MCGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder

Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18/2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18/2012 AT 9:00 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

- a. Failed to maintain control over the operating of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;
- d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of \$50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

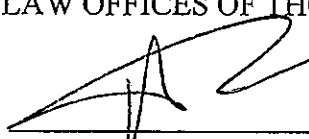
21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

- a. Failed to control operation of the chainsaw;
- b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;
- c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;
- d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;
- e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of \$50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,)
)
 Plaintiff,)
)
 vs.) No.:
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
 Defendants.)

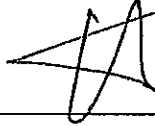
AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.
2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed \$50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.



Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie
FROM: Hans
DATE: December 5, 2011
SUBJECT: **PAUL DULBERG - NEW CLIENT**

*B/C HAM
occurred on the accident
their H.O. must pay
will cover the bills.*

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Exhibit 3

Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took an EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn \$12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

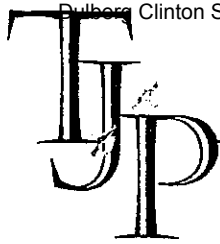
Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280
www.popovichlaw.com

FAXED

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

**RE: Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire
McHenry County Case: 12 LA 178**

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,



HANS A. MAST

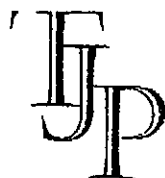
smq

Exhibit 4
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

**** Transmit Conf. Report ****P.1
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Oct 22 2013 12:24pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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The Law Offices of Thomas J. Popovich P.C.

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 McHENRY, ILLINOIS 60050
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 FACSIMILE: 815.344.5280
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THOMAS J. POPOVICH
 HANS A. MAST
 JOHN A. KORNAK

MARK J. VOGG
 JAMES P. TUTAJ
 ROBERT J. LUMBER
 THERESA M. FREEMAN

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
 Cicero, France, Barch & Alexander, PC
 6323 E. Riverside Blvd.
 Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
 McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for \$7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,


 HANS A. MAST

smq

WAUKEGAN OFFICE
 210 NORTH MARTIN LUTHER
 KING JR. AVENUE
 WAUKEGAN, IL 60085

POP 000193

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon's acts.

Both of these issues are strongly contested in your case.

As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.

As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.

Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn't really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.

Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury. Think about these issues. I will provide you Dr. Sagerman's summary soon.

Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans, Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind. I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better. Let me know, Thanks, Paul

Paul Dulberg 847-497-4250 Sent from my iPad

Exhibit

5

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: 3 pm meeting**
Date: December 28, 2016 10:39:25 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 5, 2013 at 9:46:33 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: **Re: 3 pm meeting**

Hans,

Below is a link to an article talking about the integration of digital cameras at the centegra facilities.

A friend of mine who works at NIMC for well over a decade just replied to me and she says everything is recorded and available exactly for the purposes we discussed.

<http://www.sdmmag.com/articles/print/success-stories-in-integrating-video-surveillance>

Paul Dulberg
847-497-4250
Sent from my iPad

On Nov 5, 2013, at 9:00 AM, Hans Mast <hansmast@comcast.net> wrote:

no chance, sorry

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 22:54:28 -0000 (UTC)
Subject: Re: 3 pm meeting

Also,

Any chance the hospital (centegra) has video of their parking lots?
This could disprove David's claim of talking before entering the ER.

Thanks,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad

On Nov 4, 2013, at 11:49 AM, Hans Mast <hansmast@comcast.net> wrote:

No need to bring anything, your mom is welcome...

----- Original Message -----

From: Paul Dulberg <pdulberg@comcast.net>
To: Hans Mast <hansmast@comcast.net>
Sent: Mon, 04 Nov 2013 17:31:20 -0000 (UTC)
Subject: 3 pm meeting

Hi Hans,

Curious if I should bring anything with me at 3 pm?

Mind if my Mom comes along?

Thanks and see you soon,

Paul

Paul Dulberg
847-497-4250

Sent from my iPad

Exhibit

6

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

XFINITY Connect

hansmast@comcast.net

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net>

Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:

>

> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case

>

> Sent from my iPhone

>

>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:

>>

>> Only 5, That's not much at all.

>> Is this a take it or leave it or do we have any other options?

>>

>> If you want a negligence case for the homeowners ask what happened immediately after the accident.

>>

>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.

>>

>> They all left me out in the yard screaming for help while they were busy making sure they were covered.

>>

>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

>>

>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

>>

>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

>>

>> I'm not happy with the offer.

>>

>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.

>>

>> Paul

>>

>> Paul Dulberg

>> 847-497-4250

>> Sent from my iPad

>>

>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:

>>>

>>> Im waiting to hear from John. I tried calling him last week, but no one answered.

>>>

>>> In addition, the McGuire's atty has offered us (you) \$5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

Exhibit 7

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

some point, so my suggestion is to take the \$5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....

>>>

>>> Let me know what you think..

>>>

>>> Hans

>>> ----- Original Message -----

>>> From: Paul Dulberg <pdulberg@comcast.net>

>>> To: Hans Mast <hansmast@comcast.net>

>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)

>>> Subject: Dave's Best and oldest friend John

>>> Hans,

>>> Just spoke with John Choyinski again about talking with you.

>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.

>>> I believe he will try and call sometime tomorrow.

>>> Paul

>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.

>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.

>>> Paul Dulberg

>>> 847-497-4250

>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.

A Professional Corporation

Attorneys at Law

6323 EAST RIVERSIDE BOULEVARD

ROCKFORD, ILLINOIS 61114

PAUL R. CICERO

JOHN W. FRANCE

RONALD A. BARCH

CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS

ANDREW T. SMITH

TEL: (815) 226-7700

FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of \$5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipate any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,



RONALD A. BARCH

RB:mj\37ltr.HAM

cc Tom Malatia (Claim No. 13-2779-11)

Encl.

Exhibit 8

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's \$5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the \$5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

Exhibit 9

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

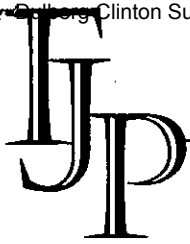
On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their \$5,000 settlement offer.

Exhibit 10

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith



The Law Offices of Thomas J. Popovich P.C.

3416 W. ELM STREET
McHENRY, ILLINOIS 60050
TELEPHONE: 815.344.3797
FACSIMILE: 815.344.5280

www.popovichlaw.com

THOMAS J. POPOVICH
HANS A. MAST
JOHN A. KORNAK

December 26, 2013

FAXED
12/27

MARK J. VOGG
JAMES P. TUTAJ
ROBERT J. LUMBER
THERESA M. FREEMAN

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: *Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire*
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your \$5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,


HANS A. MAST

smq



STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG,)
)
Plaintiff,) Case No. 12 LA 178
)
vs.)
)
DAVID GAGNON, Individually, and as)
Agent of CAROLINE MCGUIRE and BILL)
MCGUIRE, and CAROLINE MCGUIRE)
and BILL MCGUIRE, Individually,)
)
Defendants.)

**ANSWER TO PLAINTIFF'S INTERROGATORIES TO
DEFENDANTS BILL MCGUIRE AND CAROLYN MCGUIRE**

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL MCGUIRE AND CAROLYN MCGUIRE (improperly named Caroline),
by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to
Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:	William "Bill" McGuire	Carolyn McGuire
	1016 W. Elder Avenue	1016 W. Elder Avenue
	McHenry, IL 60051	McHenry, IL 60051
	Married: Carolyn	Married: Bill
	DOB: July 29, 1952	November 26, 1946
	Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.	

Exhibit 13
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
 At Time Of Occurrence:		
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90 th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:
- a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;
 - b. Who owned the chain saw at the time of Plaintiff's alleged injury;
 - c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

- a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.
 - b. Bill McGuire was the owner of the chain saw on the date of the occurrence.
 - c. David Gagnon had Bill McGuire's permission to use the chain saw.
11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:
- a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;
 - b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;
 - c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

- a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not know how often he has used chain saws in the past.
- b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

- c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.
12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

- 15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.

Auto-Owners Insurance Company

Policy No. 48-010-965-01

Eff.: May 9, 2011 thru May 9, 2012

Personal Liability (Each Occurrence): \$300,000.00

Medical Payments (Each Person): \$1,000.00

16. Do you have any information:

- (a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;
- (b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

- a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
- b. See answer to Interrogatory No. 16(a).
- c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

- (a) The subject matter on which the opinion witness is expected to testify;
- (b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
- (c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
- (d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

- a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

- c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.
- d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.
- e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.
- f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

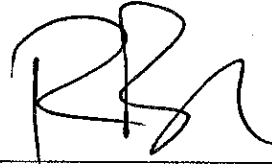
ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By



RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

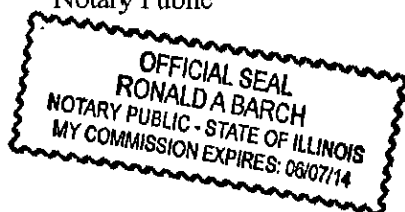
STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire
Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

RBA
Notary Public



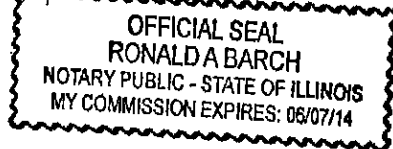
STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire
Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

[Signature]
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was
served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid,
at Rockford, Illinois, at 5:00 o'clock p.m. on 2/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff(s),

VS.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and
BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE,
Individually,

Defendant(s).

CASE NO. 12LA000178

Exhibit 14

Witness: Hans Mast

Date: 6/25/20

Court Reporter: Barb Smith

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

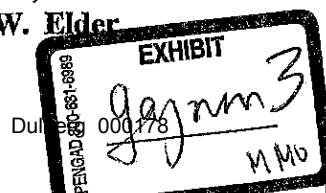
2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

- (a) Witnessed or claims to have witnessed the occurrence in question.
- (b) Was present or claims to have been present at the scene immediately before said occurrence.
- (c) Was present or claims to have been present immediately after said occurrence.
- (d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ^{BACKED}front of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

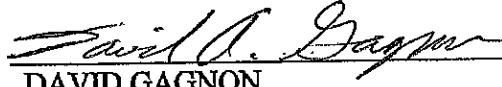
- (b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.
- (c) For each controlled expert witness, identify:
 - (i) the subject matter on which the witness will testify;
 - (ii) the conclusions and opinions of the witness and the bases therefor;
 - (iii) the qualifications of the witness; and
 - (iv) any reports prepared by the witness about the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.



DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

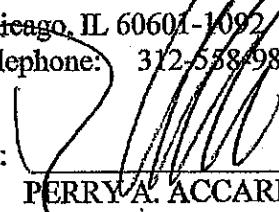
Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-538-9821

By: 

PERRY A. ACCARDO

Firm No.: 46878

E-MAIL ADDRESS:

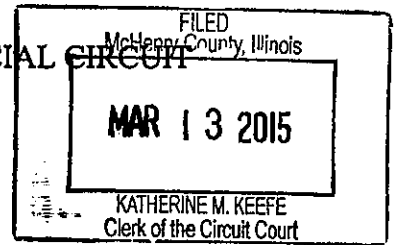
ILLINOISLEGAL@ALLSTATE.COM

Attorney Bar No.: 6228720

Attorney for Defendant(s):

David Gagnon

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS



PAUL DULBERG,

Plaintiff,

vs.

No. 12 LA 178

DAVID GAGNON, Individually, and as
Agent of CAROLINE McGUIRE and BILL
McGUIRE and CAROLINE McGUIRE
and BILL McGUIRE, Individually,

Defendants.

COPY

NOTICE OF MOTION

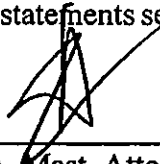
TO: ***VIA FIRST CLASS MAIL:***
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.



Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

Exhibit 15
Witness: Hans Mast
Date: 6/25/20
Court Reporter: Barb Smith

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IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

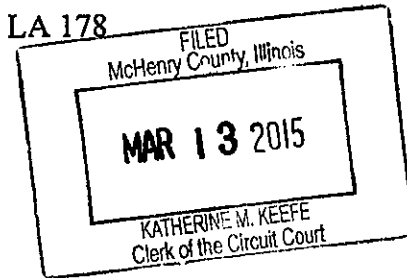
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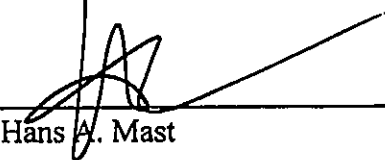
MOTION TO WITHDRAW AS COUNSEL

NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.
2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,


Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070